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ABSTRACT

This guide is designed to help college athletics administrators and faculty ensure that their program is in compliance with Title IX of the Education Amendments of 1972, which prohibits sex discrimination in educational programs, including college athletics, that receive or benefit from federal funding. It provides an overview of Title IX, the role of the U.S. Department of Education's Office of Civil Rights in enforcing the law, and examples of ways to comply with the law. It also reviews relevant case law, focusing on how courts (through published opinions) and individual plaintiffs and institutions (through settlements) have interpreted the law. The guide goes on to summarize the National Collegiate Athletic Association (NCAA) Division I athletics certification program, and presents ideas on how to promote women's athletics on campus. It provides basic information on emerging sports as a way to increase participation opportunities for female student-athletes. A listing of resource organizations, publications, and references is included. (MDM)

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ACHIEVING GENDER EQUITY

A Basic Guide to Title IX and Gender Equity in Athletics for Colleges and Universities

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Achieving Gender Equity

A Basic Guide to
Title IX and Gender Equity in Athletics for
Colleges and Universities

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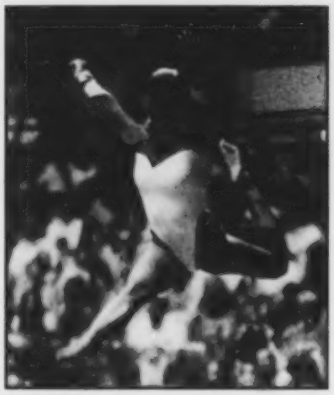

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NCAA

PART I

Introduction

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Introduction

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Title IX of the
Education Amendments of 1972 to the 1964 Civil Rights Act

An athletics program can be considered gender equitable when the participants in both the men's and women's sports programs would accept as fair and equitable the overall program of the other gender. No individual should be discriminated against on the basis of gender, institutionally or nationally, in intercollegiate athletics.

NCAA Gender-Equity Task Force

In the spring of 1992, the NCAA Gender-Equity Task Force was created in response to growing gender-equity concerns that were amplified by the 1992 NCAA Gender-Equity Study. The study indicated that despite the relatively even distribution of membership undergraduate enrollment by gender, males constituted nearly 70 percent of intercollegiate athletics participants and received nearly 77 percent of the operating budgets, 70 percent of scholarship funds and 83 percent of recruiting dollars.

In its final report in July 1993, the task force concluded that "intercollegiate athletics offer interested and able students opportunities to experience the lessons of competition, develop physical and leadership skills, be part of a team and enjoy themselves. Good intercollegiate athletics programs require competitive parity, universal and consistently applied rules, and an opportunity to participate. For many years, the NCAA has sought to assure those conditions, but there is clear evidence that it has not succeeded in providing the last one to women."

The task force issued several recommendations to NCAA member institutions, the media and the general public, one of which was the creation of a gender-equity source book for member institutions. The task force believed this book would more easily convey the highly defined legal landscape that has developed dramatically since the task force completed its work. At the same time, the task force wanted to provide resources that would help educate the membership in its efforts to provide the necessary changes in its athletics programs.

This is the second edition of the Achieving Gender Equity guide. Since the task force convened and rendered its findings, the need for a guide to the basics of Title IX has become even more critical now. In the past four years, several women student-athletes across the country initiated lawsuits that were decided in their favor, either through court-rendered decisions or out-of-court settlements. Consequently, the Federal courts have become the primary means through which the status and requirements of Title IX regulations have been confirmed, clarified and enforced in favor of the student-athlete.

A Brief History

It is important to briefly retrace the path of Title IX and its positive impact on the female student-athlete. In 1972, the Education Amendments to the Civil Rights Act of 1964, upon which the 1975 regulations, the 1979 policy interpretation and relevant case law are based, stated that "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." The adoption of this law in 1972 facilitated tremendous and intense growth in women's athletics participation during the 1970s. By 1978, the number of female high-school student-athletes had grown from 300,000 to more than two million. Similarly, women's collegiate sports participation doubled from 32,000 participants in 1971 to more than

64,000 in 1977. By 1980, however, the rapid rise in participation began to level off when Title IX protections weakened.

The United States Supreme Court removed the applicability of Title IX to athletics programs in the 1983 case of Grove City v. Bell. However, this decision was reversed by the United States Congress with the Civil Rights Restoration Act of 1988. The Act then was significantly strengthened by the 1992 Supreme Court decision in Franklin v. Gwinnett. The Franklin decision allowed plaintiffs to recover monetary damages and attorney fees in Title IX cases. Clearly, much of the weight Title IX carries today can be attributed to the Civil Rights Restoration Act and the decision rendered in Franklin v. Gwinnett. Before Franklin, the courts could only provide injunctive relief, i.e., an order to end discrimination that was found.

Existing court rulings on Title IX, as well as findings made by the Office for Civil Rights, have never been more abundant nor more significant than in today's world of collegiate athletics. As a result, the need for compliance with Title IX requirements has never been greater. This need is apparent despite the significant growth in women's participation rates at NCAA schools. The most recent NCAA participation rate study from 1994-95 indicates that overall participation numbers in women's sports have increased from approximately 93,000 in 1990-91 to more than 110,000 in 1994-95. It should be noted that men's participation also has increased from more than 184,000 to more than 189,000 during the same period of time.

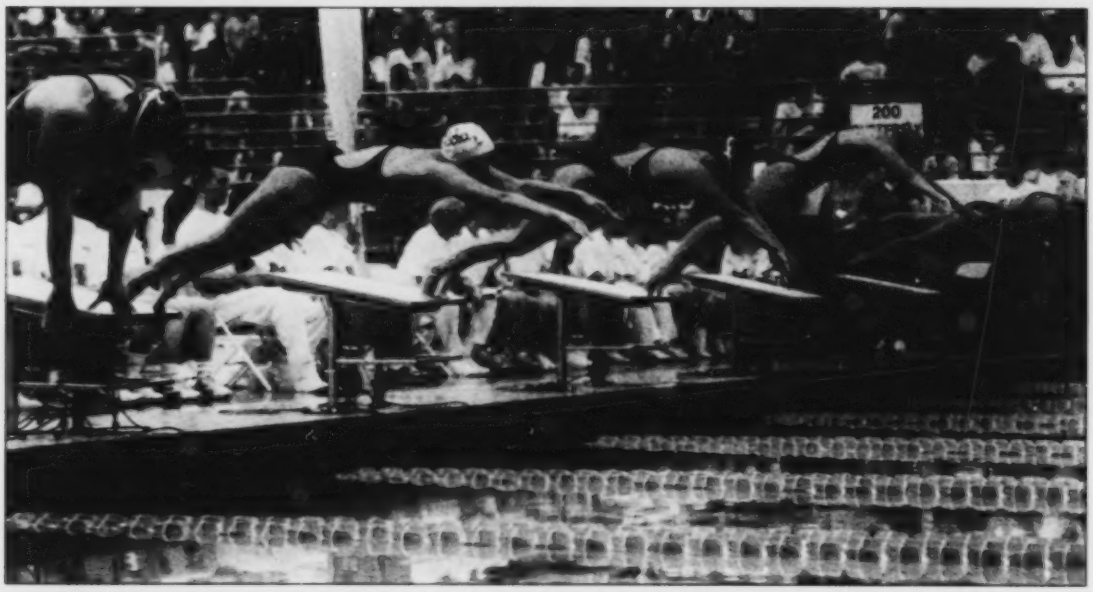
How This Book Helps

The first step an athletics administration must take is to form a gender-equity campus committee that will obtain a basic and working knowledge of Title IX in order to begin the task of ensuring that any athletics program is in compliance with the law.

This book is designed to help administrators and faculty achieve that goal, with seven convenient sections that have been updated from the original publication. Moreover, the newest section, a section on NCAA certification, looks at the certification process for Division I. The seven sections include:

- **Title IX Basics**

Written by former Office for Civil Rights staff member Valerie Bonnette, who also co-authored the 1990 Office for Civil Rights Title IX Investigator's Manual, this section provides an essential outline of the components of Title IX and several examples of ways in which to be in compliance with the law. Included in this section is OCR's policy interpretation clarification issued in January 1996. The clarification addresses many issues and questions raised by



member institutions over the past few years in their efforts to comply on their campuses.

▪ Current Case Law

The NCAA's Washington, D.C., legal counsel presents an in-depth look at the critical developments in case law that have occurred in the area of Title IX, particularly during the last four years.

▪ Athletics Certification

The guide's newest section summarizes the Division I athletics certification program, which focuses upon the athletics certification operating principle related to gender issues.

▪ Promotion Ideas

Promotion and publicity help create a more equitable athletics environment on campus. This section includes several promotional ideas that have been gathered from the membership, many of which have been provided by the National Collegiate Association of Marketing Administrators. New in this section is a sampling of conference promotions.

▪ Emerging Sports

This section provides basic information regarding those sports that have been identified as "emerging" pursuant to legislation adopted at the 1994 NCAA Convention. These sports may be adopted by an athletics program as a way to increase participation opportunities for female student-athletes. Note that one of the "emerging" sports, women's rowing, became an official NCAA sport this year with the creation of the National Collegiate Women's Rowing Championship. Much of the information in this section was obtained from the appropriate national governing bodies. Also included is an explanation of relevant NCAA legislation regarding sport sponsorship.

▪ Resources

The last section includes a list of nonprofit legal and women's organizations, coaches associations and national governing bodies, plus a list of periodicals about women in education and athletics. Also included are the addresses and telephone numbers for the regional offices of the Office for Civil Rights. In addition, e-mail addresses, relevant Web sites and pertinent legal citations have been included.

This book is not intended to provide the lone standard by which an institution measures its compliance with Title IX regulations or a blueprint for being in compliance with the NCAA-

adopted principle of gender equity. Achieving gender equity is an ongoing and evolving process that must occur according to the particular needs of each member institution in light of the needs of the female student-athlete. However, this guide should be an important first step on the path to achieving gender equity, not only as a useful tool for those schools that have

begun implementing necessary changes, but for those that require further guidance in the evaluation of their programs.

Since this guide was first published in the fall of 1994, the NCAA has conducted two Title IX seminars in April 1995, two more in April 1996 and will sponsor two more in the spring of 1997. In addition, the NCAA education outreach staff, in collaboration with the research staff, has created a women's resource center at the NCAA national office. The guide, the seminars and the resource center are just three of the services intended to provide a greater understanding and a clearer perspective on the need to ensure equitable opportunities and treatment for female student-athletes at all NCAA member institutions.

For further information regarding this publication and other gender-equity concerns, please contact Janet Justus, NCAA Director of Education Outreach, at 913/339-1906, or via e-mail at jjustus@ncaa.org.

PART II

Title IX Basics

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Title IX Basics

by Valerie M. Bonnette*

*Good Sports, Inc., Title IX and Gender Equity Specialists***

Introduction

"Title IX" refers to Title IX of the Education Amendments of 1972, a Federal civil rights statute that prohibits sex discrimination in education programs, including athletics programs, that receive or benefit from Federal funding. Since nearly all educational institutions benefit from Federal funding, nearly all educational institutions must comply with Title IX. The Office for Civil Rights (OCR) within the U.S. Department of Education is responsible for enforcing Title IX. The Federal regulation implementing Title IX became effective July 21, 1975. On December 11, 1979, OCR issued an Intercollegiate Athletics Policy Interpretation to clarify the Title IX regulatory requirements for athletics programs.

The Title IX statute is the law enacted by the U.S. Congress stating the general requirements for nondiscrimination on the basis of sex. The Title IX regulation, which was written by employees of the enforcement agency and submitted to Congress for review, also has the force of law and provides greater specificity. The Policy Interpretation is the enforcement agency's policy interpreting the Title IX regulation and is afforded considerable deference by courts. The Title IX regulation and the Policy Interpretation are the two major sources for specific requirements for athletics programs.

"Title IX Basics" contains the author's interpretations of OCR's policies in evaluating athletics programs under Title IX and should not be considered to have the endorsement of OCR. Additionally, this text is intended as technical assistance and not legal advice. Title IX Basics highlights the most important compliance considerations and does not anticipate addressing every concern for athletics programs.

In addition, the "Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test" is included at the end of this section. The OCR policy interpretation clarification was issued in January 1996 and is a clarification of the 1979 policy interpretation. The clarification is designed to help member institutions understand OCR's position on enforcing Title IX.

Basic Concepts

The 1979 Intercollegiate Athletics Policy Interpretation divides athletics issues into three major categories to be analyzed for compliance: sports offerings; scholarships; and everything else, which includes 11 program areas. The three categories are:

I. Accommodation of Interests and Abilities (sports offerings).
II. Athletic Financial Assistance (scholarships).
III. Other Program Areas (everything else—11 program areas), including:
   (1) equipment and supplies;
   (2) scheduling of games and practice time;
   (3) travel and per diem allowances;
   (4) tutoring;
   (5) coaching;
   (6) locker rooms, practice and competitive facilities;
   (7) medical and training facilities and services;
   (8) housing and dining facilities and services;
   (9) publicity;
   (10) support services; and
   (11) recruitment of student-athletes.

Under each of the program areas, compliance is determined by weighing several factors, which

* Before founding ***Good Sports, Inc.***, the author was a senior program analyst with the Office for Civil Rights for 15 years and co-authored OCR's 1990 Title IX Athletics Investigator's Manual.

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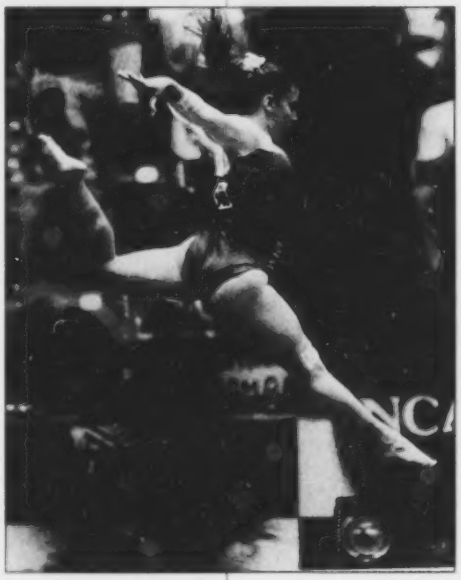
are listed in the Policy Interpretation. In the following sections addressing each of the 13 program components, these factors have been condensed to simplify explanations.

Overall Approach. Determining compliance for any of the factors requires comparing the benefits provided to all men's teams to the benefits provided to all women's teams. This analysis is required because Title IX protects opportunities and benefits on the basis of sex, not on the basis of volleyball, basketball or football.

The Policy Interpretation allows institutions great flexibility in providing benefits and services to female and male athletes. This flexibility, designed to uphold the right of educators to decide how best to operate the education program that is intercollegiate athletics, makes determining compliance with Title IX especially difficult. Women's and men's teams may be provided different benefits as long as a balance of benefits in the overall women's and men's programs is provided. For example, if men's basketball has three sets of practice uniforms while women's basketball has only one set of practice uniforms, this may be acceptable if women's volleyball receives three sets of practice uniforms while men's wrestling has only one set. If women's golf has more competitive events than men's golf, this may be acceptable if men's tennis has more competitive events than women's tennis. The difficulty for administrators is keeping track of such differences and evaluating their significance.



Nature of Particular Sports. The Policy Interpretation also permits different benefits and services based on the nature of particular sports. For example, providing five pairs of shoes for each participant on the football team may be appropriate, but five pairs of shoes is unlikely to have the same priority for the swim team. Practicing four hours a day may sharpen the skills of the golf team, but running four hours a day is probably excessive for cross country athletes. Simply, the need for benefits and services may vary from sport to sport. Analyzing compliance entails a comparison of the extent to which benefits and services are provided based on what is needed and desired.

Reasonable Professional Decisions. Different benefits also may be justified by the reasonable professional decisions of coaches and other athletics personnel. For example, a coach may prefer a particular line of equipment even though it is not the most expensive. Coaches may prefer certain recruitment areas for their sports. Professional decisions such as these are permissible. There is a very fine line, however, between professional decisions and discriminatory treatment. Coaches who recruit in a particular region or select certain equipment because of lack of funds are not making reasonable professional decisions if the result is an adverse effect on one sex. Reasonable professional decisions may determine different benefits, but only if the choices of coaches in the program for one sex are not more limited than choices of coaches in the program for the other sex.

Analyzing Compliance

Different benefits require different analyses. The difficulty is deciding which analysis is appropriate for which benefit.

Percentages of Athletes. As stated in the Policy Interpretation, "[N]o subgrouping of male or female students (such as a team) may be used in such a way as to diminish the protection of the larger class of males and females in their rights to equal participation in educational benefits or opportunities. [This test is not met] where large participation sports (e.g., football) are compared to smaller ones (e.g., women's volleyball) in such a manner as to have the effect of disproportionately providing benefits or opportunities to the members of one sex." [44 Fed. Reg. 71422 (1979)]

Often, the correct analysis for compliance

involves determining whether equivalent percentages of female and male athletes are provided equivalent quality and quantities of benefits and services. From an administrator's perspective, this is complicated at institutions that offer football because football teams ordinarily have a much larger number of athletes than any other team. As a result, more women's teams than men's teams usually must be provided superior benefits and services to achieve compliance. For example, a rather common practice, and common compliance problem, is to provide men's football and basketball teams benefits that are superior to those of all other men's teams and all women's teams. If football and basketball account for half of the male participants, then half of the female participants should be provided benefits equivalent to the men's football and basketball teams. Half of the female athletes may make up three or four teams rather than two.

Number of Teams. In some situations, analyzing percentages of athletes is not as appropriate as comparing the number of teams because percentages ignore the nature of particular sports and the fact that some benefits are not needed by some athletes or teams. For example, certain sports such as football and softball may have a lot of equipment and need lots of storage space. Other sports, such as cross country, do not have a lot of equipment and may need little or no storage space. Where some teams do not need certain benefits, analyzing numbers of teams may be the more reasonable approach. The comparison would simply be how many teams for each sex that need the benefit receive the benefit. If more teams for one sex are denied the needed benefit, there is a likely compliance problem.

In determining which analysis to use, plan to start with percentages of athletes and consider numbers of teams where certain teams do not need the benefit based on the nature of the sport or the reasonable professional decisions of athletics personnel.

What is a Violation?

A violation of Title IX is a denial of equal opportunity on the basis of sex. Inevitably, this is a judgment, one that OCR has authority to make. Some judgments are more obvious than others. For example, some problems that have a significant impact on the program and, thus, deny equal athletics opportunity on the basis of sex are: not offering a team that should be offered to one sex; not offering enough scholarships to one sex; not providing enough coaches in one program; not providing facilities for teams of one sex; and spending substantially disproportionate funds for recruitment.

Many institutions often have a series of minor compliance problems. While each problem does not by itself deny equal athletics opportunity, collectively, this series of problems adds up to a denial of equal athletics opportunity. For example, women's volleyball may not have practice uniforms while all other women's and men's teams do. This is a disparity in the program area of equipment and supplies, but this is not a denial of equal athletics opportunity to women at the institution. However, a series of similar disparities affecting teams for one sex may constitute a violation.

Other considerations should be noted. The higher the percentage of athletes affected by any disparity, the more serious the problem. A problem affecting one team is not as serious as a problem affecting two teams, which is not as serious as a problem affecting all teams for one sex. Similarly, not providing socks to a team is not as serious as not providing practice uniforms, which is not as serious as not providing transportation to away contests, which is not as serious as not providing coaching, which is not as serious as the most serious problem of all—not providing the team.

How Title IX Looks at the Money

For many factors, the analyses under Title IX consider not the costs of benefits or even the source of the funds, but the tangible benefits provided to student-athletes. For example, providing a complete set of practice uniform clothing and accessories for a football player will cost more than completely outfitting an athlete with practice gear for cross country. To make a simple comparison between a cross country athlete and a football athlete, the Title IX comparison considers not the cost, but amount, quality and suitability. In other words, if the football player is provided every item for a practice uniform and the cross country athlete is provided every item for a practice uniform, this is equivalence for amount of equipment. If both athletes are provided high quality equip-

ment, again, this is equivalence. If all items are suitable for the respective sports, this is compliance. The cost of the specific items is essentially irrelevant.

Proportionate Dollars. The Policy Interpretation requires that proportionate dollars be awarded for scholarships, and OCR policy requires proportionate dollars for recruitment and coaches' salaries. This means if 40 percent of the participants are women, then 40 percent of the scholarship dollars, 40 percent of the dollars spent for coaches' salaries, and 40 percent of the recruitment dollars should be awarded to the women's program.

While proportionate budgets are required in these areas, it may seem logical that spending on all benefits should be proportionate. Unfortunately, compliance is not so simple. Different teams need different benefits, and different benefits cost different amounts. More importantly, record keeping, budget allocations, and expenditures vary from institution to institution. A large, expensive equipment item such as timing systems for the women's and men's swim teams may be charged only to the women's swim team budget, creating the appearance that the women's team receives vastly superior benefits to the men's team. Furthermore, where coaches have discretion to spend their budgets as they determine appropriate, the dollar amounts attributed to specific line items of a team's budget do not guarantee that those dollars are spent on the benefits identified in the budget line item. In short, budget figures may be manipulated to conceal discriminatory practices.

Booster Clubs and Guarantees. The donations of booster clubs or guarantees paid by other institutions may not justify differences in benefits or services to female and male athletes. If, for example, funds are donated just to football, an institution may achieve compliance by using the donated funds for football and allocating the funds that otherwise would have been budgeted for football to women's teams as necessary to provide equivalent benefits and services. The bottom line always is that the institution is responsible for compliance. An institution is not absolved of this responsibility when disparate benefits are created by donors or others.

Coach's Discretion. Individual coaches can create Title IX compliance problems as quickly as they can create NCAA compliance problems. For example, a coach who spends scholarship dollars on equipment and supplies may jeopardize the institution's compliance with the scholarship requirements of Title IX. Since the institution bears responsibility for compliance, administrators may wish to establish guidelines where certain coaches are poor financial planners or simply make poor decisions.

Revenue-Producing Sports. Revenue-producing sports are not exempt from Title IX. An analysis of benefits provided to male and female athletes that excludes, for example, benefits to football or basketball participants because those sports may produce revenue, is a faulty analysis for determining Title IX compliance.

Suggestions for Administrators

Even though Title IX permits great flexibility in providing a balance of benefits, experience shows that differences between men's and women's teams in a particular sport are rarely balanced or offset by differences for teams in other sports. Because of this, the following sections usually suggest providing equivalent benefits in the same sports for women and men and then equivalently appropriate levels of benefits for dissimilar sports. When benefits are based on the nature of sports or reasonable professional decisions, then providing benefits to the same or similar numbers of women's and men's teams is suggested. Generally, these are the simplest approaches for evaluating compliance and providing benefits. These suggestions, however, should not be considered the only compliance analyses or methods.

There is one general caution: be aware of the percentages of female and male participants receiving any benefit. For example, if every sport offered to women is also offered to men, but men are also offered ice hockey, compliance would not be achieved by matching all the benefits for women's teams to those for the men's teams and then providing superior benefits to ice hockey. The final analysis for Title IX compliance, again, involves a comparison of the total women's program to the total men's program. While team to team comparisons are suggested and should reveal differences in benefits, remember that compliance is not deter-

mined until all teams for women have been compared to all teams for men.

Institutions may choose to emphasize different sports for women and men. Where benefits must be provided to similar percentages of male and female athletes, administrators should identify the combinations of participation numbers of women's and men's teams that constitute the same percentages. For example, football and men's basketball may comprise half the male participants while basketball, volleyball, softball and tennis may constitute half the women's participants. These two men's teams and four women's teams could be targeted to receive benefits to the same extent. Planning this initially may take time, but once a plan is established, it may be easy to follow.

Accommodations of Interests and Abilities

The accommodation of interests and abilities is the regulatory language addressing what sports an institution offers. Compliance is analyzed by means of a three-part test for participation opportunities and a two-part test for levels of competition. Compliance problems under the two-part test for levels of competition are unusual because institutions generally have both women's and men's teams competing at the same division level. However, the three-part test for participation opportunities is the analysis that focuses on the most serious, and one of the most common, of compliance problems.

Participation opportunities are, in effect, the number of students actually participating in the program. A participant is someone who is on the squad list and on the team as of the first date of competition. This includes walk-ons. Anybody who quits after two weeks of practice should not be counted. An athlete who competes for more than one team should be counted for every team for which he or she competes. That is, the athlete who competes on cross country, indoor track and outdoor track should be counted three times. This is a different count than that used for athletics scholarships where athletes are counted only once even when they compete on more than one team.

Participation Opportunities

There are three ways to comply. An institution need only meet one of these three methods in order to comply. An institution may:

(1) Provide participation opportunities for women and men that are substantially proportionate to their respective rates of enrollment as full-time undergraduate students; **or**

(2) Demonstrate a history and continuing practice of program expansion for the underrepresented sex; **or**

(3) Fully and effectively accommodate the interests and abilities of the underrepresented sex.

1. Opportunities Proportionate to Enrollment. Compliance with this method is the simplest to analyze as this is determined by a mathematical calculation. The rates of participation of women and men in the athletics program should be substantially proportionate to their respective rates of enrollment as full time undergraduate students. Thus, if women are 52 percent of the full-time undergraduate enrollment and men are 48 percent, then 52 percent of the athletics participants should be women and 48 percent should be men.

Permissible Variances From Proportionality. OCR does not use a statistical test to define substantial proportionality and has yet to provide definitive guidance on this question. Some out-of-court settlements have agreed to five percentage points as an acceptable variance; that is, if 52 percent of the full-time undergraduates are women, then women must be from 47 percent to 57 percent of the participants.

2. History and Continuing Practice of Program Expansion for the Underrepresented Sex. The key to compliance with this method is to demonstrate a continuing practice of program expansion for the underrepresented sex. If women are underrepresented, program expansion means the addition of women's teams; it does not mean: unreasonable additions of walk-ons to women's teams; cutting male participants to improve women's rate of participation; or improving

benefits in other program areas such as equipment and supplies and travel and per diem. There is no set standard of continuing expansion that ensures compliance. OCR has considered actions taken in the most recent three years as indicators of continuing program expansion. In general, few institutions satisfy this criterion.

3. Fully and Effectively Accommodate the Underrepresented Sex. Participation rates disproportionate to enrollment are common in programs offering football. Even where women are significantly underrepresented, however, institutions may comply by offering every team for women in which there is: 1) sufficient interest and ability for a viable team; and, 2) a reasonable expectation of competition for that team in the institution's normal competitive region.

Determining Unmet Interest. Determining compliance with this method involves determining whether there is any unmet interest on the part of the underrepresented sex, which is nearly always women. Identifying unmet interest involves a review of on-campus and feeder programs. On-campus programs include, but are not limited to, club sports, intramural sports and elective physical education courses. Feeder programs include high-school programs, junior college programs, Amateur Athletic Union programs, and community, state and regional recreational programs in the institution's normal recruitment area. A survey of current students has limited use at institutions that recruit athletes, and some random sample surveys might miss entirely the students who have the interest and ability to participate in a particular sport.

Compliance with this third method is unlikely if there is a sport not currently offered to the underrepresented sex for which there is sufficient competition and: a club team; and/or significant participation at high schools in the institution's normal recruitment area; and/or substantial intramural participation.

Levels of Competition

There are two ways to comply. An institution need only meet one of these two methods in order to comply. An institution may:

(1) Provide proportionally similar numbers of male and female athletes equivalently advanced competitive opportunities; **or**

(2) Demonstrate a history and continuing practice of upgrading the competitive opportunities available to the historically disadvantaged sex.

1. Equivalently Advanced Competitive Opportunities. Compliance is achieved when the same or similar percentages of the total contests for women and men are at the appropriate division level. For example, if women's teams schedule a total of 142 contests, of which 11 are outside the division level, then 92 percent (131 of 142) of the women's games are at the appropriate competitive level. If 20 of the men's 183 contests are outside the division level, then 89 percent (163 of 183) of men's contests are at the appropriate competitive level. The three percentage point difference between 92 percent and 89 percent is probably insignificant. While no percentage point difference defines compliance, differences of five percentage points or more should be avoided. Differences up to five percentage points and sometimes more may be justified if coaches and athletes indicate satisfaction with the level of competition.

Junior Varsity. Junior varsity athletes are considered participants. A much higher percentage of athletes for either sex participating at the junior varsity level could raise compliance questions regarding levels of competition.

2. History and Continuing Practice of Upgrading Opportunities. Compliance is achieved when a continual improvement in scheduling better competition is demonstrated for the historically disadvantaged sex. A simple demonstration of this is to move to a higher NCAA division level. Analyzing compliance under this method is rarely necessary since most institutions comply with the first method.

Athletics Financial Assistance

The compliance determination for athletics scholarships is based on a simple mathematical calculation. Total scholarship dollars are to be divided in proportion to the participation of men and women in the intercollegiate athletics program. In other words, if 60 percent of the participants are men and 40 percent are women, then 60 percent of the scholarship dollars are to be awarded to men and 40 percent to women.

No other requirements are imposed by Title IX for athletics scholarships. This means that an institution has the flexibility to award as many scholarships to a team as it wants, ranging from zero dollars to the maximum permitted by the NCAA for the sport. The hard part of the compliance determination is figuring out who to count as participants and which dollars from any budget line items should be included.

Participants. The Policy Interpretation contains a four-part definition of "participant." A simplified definition, as noted in the previous section on the accommodation of interests and abilities, is that a participant is someone who is on the squad list and on the team as of the first date of competition. Also, any athlete who has been injured but is receiving a scholarship should be counted as a participant. An athlete who competes for more than one team should be counted only once. That is, the athlete who competes on cross country, indoor track and outdoor track should be counted one time only, not three times. This is a different count than that used for the accommodation of interests and abilities. This difference is because one student may only receive one scholarship.

Dollars. The scholarship dollars included in the calculations are those dollars awarded to participants for the regular academic year and for summer sessions. Scholarships awarded to fifth-year students who have exhausted their eligibility, team managers, cheerleaders, etc., do not count because those individuals are not participants. Any housing and dining expenses included in the scholarship budget line items for athletes on campus when classes are not in session should be excluded from the calculations.

Housing and dining expenses and team manager awards are considered under other sections of the Title IX regulation. Fifth-year awards are considered separately. The percentages of fifth-year students and scholarship awards should match the percentages of awards and participation in the intercollegiate program. However, not all students need fifth-year awards, and this is an acceptable justification for differences.

Permissible Variances from Proportionality. A "z" test and a "t" test are used by OCR to determine whether percentage point differences are statistically significant and, thus, discriminatory. Experience in conducting these tests indicates that a difference of three percentage points or less should not be statistically significant. In other words, if 40 percent of the participants are women, and female athletes receive from 37 percent to 43 percent of the total scholarship dollars, this should be compliance. A difference that exceeds three percentage points may risk a violation finding. The larger the number of participants and the more scholarship dollars awarded, the smaller the percentage point difference that is tolerated by these tests.

Suggestions. Individual students and/or coaches may make decisions that result in scholarship dollars not being awarded. Administrators should aim for strict proportionality when budgeting for awards so that individual decisions do not result in percentage point variances that raise compliance questions.

An occasional compliance problem is providing male participants but not female participants with summer-session and/or fifth-year awards. Administrators should ensure that athletes of one sex are not more discouraged, either formally or informally, than athletes of the other sex in obtaining summer-session or fifth-year awards.

Equipment and Supplies

Determining compliance for the provision of equipment and supplies involves evaluating

quality and suitability, quantity and availability, and maintenance and replacement. Equipment and supplies includes everything worn by athletes from helmets to undergarments, sport-specific equipment such as baseball bats, hockey sticks, golf clubs, tennis balls, and general equipment such as travel bags, travel sweats, video equipment, water bottles, and ankle and wrist weights.

Quality. Compliance is achieved when the same or similar percentages of male and female athletes are provided equipment of the same quality. For example, men's football and basketball might represent 50 percent of the male athletes. If football and men's basketball have excellent equipment and supplies while all other men's teams have average equipment and supplies, then compliance is achieved when 50 percent of the female athletes also are provided excellent equipment while other female athletes have average quality equipment. Fifty percent of the female athletes may be three or four women's teams, not just two. A common compliance problem to avoid is for men's football and basketball to be provided higher quality equipment and supplies than all other men's teams and all women's teams.

Suitability. Suitability refers to whether an equipment item meets specifications for the sport. This is usually not a compliance concern. An occasional compliance problem is when practice or competitive uniform items made in men's sizes are provided to one or more women's teams, creating an improper fit for several athletes.

Amount. The simplest way to ensure compliance is to provide the same numbers of equipment items to men's and women's teams in the same sports. This includes providing the same numbers of game uniforms, practice uniforms, warm-ups, pairs of shoes, sport-specific equipment items, and general items such as travel bags and travel sweats. For dissimilar sports, equipment should be provided to the same extent as needed or desired based on the nature of the sport. A common compliance problem arises when women's teams are provided fewer sets of game uniforms, fewer or no sets of practice uniforms, insufficient pairs of shoes, and fewer or no general equipment and supply items such as travel bags, travel sweats, video equipment and water bottles.

Availability. Availability refers to accessibility and can be affected when equipment is stored where athletes have access only during certain times of day or days of the week. This becomes a compliance problem when, for example, a women's team has difficulty using equipment during nontraditional practice hours while no men's teams have this difficulty.

Maintenance. Maintenance includes equipment storage, team managers for handling equipment, laundry and equipment repair.

Storage. Some sports require minimal equipment storage while others require extensive storage space. The same or similar numbers of women's and men's teams should have storage that is equivalently adequate for the needs of the sport and in equivalently convenient locations to practice and competitive facilities.

Team Managers. The simplest way to comply is to assign the same number of team managers to women's and men's teams in the same sport, and provide managers with the same compensation whether they are paid scholarships or work-study funds. For dissimilar sports, managers should be provided to the same extent needed or desired based on the nature of the sport and the amount of equipment for the sport. For example, 10 managers may be adequate for football while two or three may be equally satisfactory for the volleyball team.

Laundry. Laundry service should be equally available to men's and women's teams. Where this is true, there is compliance even when certain teams choose not to use the service. Avoid the common compliance problems which include: institution staff do laundry for men's teams only; institution staff only have time to do the laundry for the football team and no one else; men's teams have priority so that they have clean uniforms for both morning and afternoon practices, while women's teams have clean uniforms for morning practices only.

Repair. Equipment repair should be handled in the same way for women's and men's teams. If a professional equipment manager attends to repairs for some men's teams, this should be true for some women's teams. A common compliance problem to avoid is for a professional equipment manager to do repairs for men's

teams while women's coaches and athletes must do their own repairs.

Replacement. Keep it simple and establish the same replacement schedule for women's and men's teams in the same sports, be it as needed, every year, every two years, every three years, etc. For dissimilar sports, establish the same replacement schedules unless the nature of the sport justifies a difference. A common compliance problem occurs when lack of funds results in one or more women's teams keeping uniforms and other equipment items for three or four years while men's teams replace items more often.

Scheduling of Games and Practice Time

This program area includes the number of competitive events; the time of day of competitive events; the number, length and time of day of practices; preseason and postseason competition; and the season a sport is scheduled and the length of season.

Number of Competitive Events. The number of competitive events is counted differently under Title IX than under NCAA rules. Under Title IX, the more competition, the greater the benefit. For example, two tennis matches in one day are two competitive events, not one day of competition. All contests in the traditional and nontraditional seasons are counted, including contests against foreign teams, the U.S. national team, and other contests that may be exempt from NCAA limits. Both the number of contests and the number of days of competition should be counted to identify any differences between women's and men's teams. Preseason and postseason contests are reviewed separately, and any events considered scrimmages should not be counted.

The simplest way to comply is to schedule the same number of competitive events for women's and men's teams in the same sport. For example, if men's basketball schedules 29 games (two of which may be exempt from NCAA limits), then women's basketball should schedule 29 games. For dissimilar sports, the same percentage of the maximum allowable contests should be scheduled. For example, if football schedules 10 of the 11 games permitted, or 91 percent of the maximum allowed, and field hockey schedules 23 of the 25 contests permitted, or 92 percent of the permissible contests, the football and field hockey schedules are equivalent, the difference between 91 percent and 92 percent being negligible. A common compliance problem occurs when one or fewer contests are scheduled for women's teams than men's teams, and/or when schedules for a women's team (often softball) has significantly fewer events than the maximum while schedules for all men's teams are at or very near the maximum number of contests.

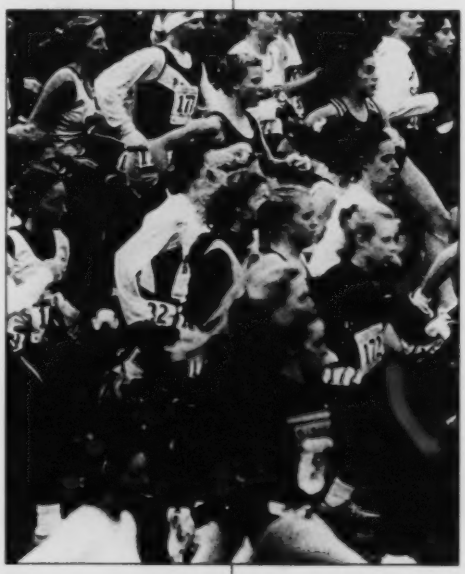
Time of Day of Competitive Events. The time of day competitive events are scheduled varies significantly and is often dependent on the nature of the sport, class schedules of athletes, and facility availability. Competitive events should be scheduled at times that are equally convenient (or equally inconvenient) for men's and women's teams. Avoid the common compliance problem of scheduling women's and men's basketball double-headers where the women's game is at a less convenient time than the men's game, limiting audience attendance and negatively affecting the women's class schedules.

Practice Opportunities. The simplest approach for compliance is for women's and men's teams in the same sport to practice the same or very nearly the same number of hours per week. For dissimilar sports, practices should be equivalently adequate based on the nature of the sport. For example, golf athletes may practice twice as many hours as cross country athletes because of the nature of the sports. Practice opportunities are equitable if the coaches schedule practices that are equivalently adequate for conditioning and skill development in these respective sports.

Time of Day of Practices. Coaches may choose to schedule practices for three hours in the afternoon or have three separate sessions during the day. Compliance problems occur usually when specific teams must squeeze in their practice time around other groups using the same facilities, and women's teams schedule practices that are shorter or at less convenient times of day such as during the dinner hour. A common com-

pliance problem to avoid is providing men's basketball the preferred practice schedule while women's basketball and volleyball schedule less favorable times around men's basketball. If facility availability is a problem, schedules may be alternated so that facilities are shared equitably.

Preseason Competition. The simplest compliance method is to schedule the same sports for men and women for the same number of preseason events, while scheduling an equivalently appropriate number for dissimilar sports based on the nature of the sports. A common compliance problem is that preseason contests are scheduled for men's teams while none or fewer contests are scheduled for women.



Postseason Competition. The practice at most institutions is that whichever team qualifies for postseason competes in postseason. This practice is in compliance with Title IX, with one occasional exception. The occasional problem occurs for conference tournaments where all men's teams but not all women's teams qualify automatically. For example, a conference with eight member institutions provides that all eight men's basketball teams automatically qualify for the conference championship tournament, but only four women's basketball teams qualify. Under Title IX, the four institutions whose women's teams do not qualify are considered to be denying postseason competition to those women's teams. The conference should change this policy immediately. If postseason competition must be denied to any teams, this should not affect teams for one sex more than teams for the other sex.

Season of Sport and Length of Season. Competition should be scheduled in traditional and nontraditional seasons to the same extent for women's and men's teams. A common compliance problem is for all men's teams to compete in the nontraditional seasons while one or more women's teams are denied this benefit. One of the more common problems occurs when one individual is the only coach for women's volleyball and softball, and the teams are denied competition during the nontraditional seasons because the coach cannot handle both teams at the same time, while no men's teams have this limitation.

Season lengths should be the same number of weeks for women's and men's teams in the same sport and as appropriate to the nature of the sport for dissimilar sports. Again, conference rules create an occasional compliance problem when a season-ending tournament for women is scheduled a couple of weeks before the men's tournament in the same sport, creating a more compressed schedule for the women's teams, limiting practices and potentially limiting the number of contests the women's teams may schedule.

Travel and Per Diem Allowances

The compliance determination involves a review of the modes of transportation; housing furnished during travel; length of stay before and after competitive events; per diem allowances; and dining arrangements.

Modes of Transportation. Several nondiscriminatory factors may affect modes of transportation including distance, size of the travel squad, others accompanying the team, and the amount of equipment. The most revealing comparison is when women's and men's teams of the same travel squad sizes travel the same distance; if they use different modes of transportation, it is a likely compliance problem.

Distance. A nondiscriminatory policy is when distance dictates mode of transportation for all teams. For example, 200 miles or less, vans and cars are used unless the size of the travel squad (for example, football) requires a bus; 200 to 600 miles, buses are used, regardless of team size; and, more than 600 miles, air transportation is used. Avoid the occasional compliance

problem where women's teams are limited in the distance they may travel while men's teams are not.

Travel Squad. Travel squad sizes should be the same or very nearly the same for women's and men's teams in the same sport and as equivalently appropriate for dissimilar sports. A common problem to avoid is setting limits on travel squad sizes that differ for women's and men's teams in the same sport.

Others Traveling With the Team. Additional travelers such as coaches, trainers, sports information staff and team managers, may determine the need for a different mode of transportation. As with travel squad sizes, if limits must be set, they should be the same for women's and men's teams in the same sport. For dissimilar sports, the nature of the sport may determine whether and how many trainers should accompany the team, and the amount of equipment may determine the need for team managers to travel with the team. A common compliance problem occurs when lack of funds limits the personnel that accompany women's teams more often than men's teams.

Housing Furnished During Travel. Compliance is achieved when equivalent percentages of male and female travel squad athletes are assigned two to a room, three to a room, four to a room, etc., and are provided housing of comparable quality. For example, if football and men's basketball are the only men's teams assigning athletes two to a room, and they are 50 percent of the male travel squad athletes, then 50 percent of the female travel squad athletes should be assigned two to a room. Half of the female travel squad athletes may be three or four women's teams. Additionally, hotel accommodations overall should be comparable. A common compliance problem is assigning female athletes three and four per room while male athletes are assigned two per room.

Length of Stay Before and After Competitive Events. The nature of the sport often determines the time of day of the competitive event, which in turn dictates when a team travels. For example, cross country meets may be scheduled for the morning, and teams may travel to the site the day before the competitive event. Golfers may play a practice round on a course before competition and, again, travel to the competitive site the day before. Avoid the occasional compliance problem where women's teams arrive shortly before a competitive event while men's teams arrive hours and sometimes the day before an event, allowing for practice, rest or meals.

It is common for teams to leave immediately after the competitive event with an occasional exception because of distance traveled or to take advantage of less expensive air fares. Avoid practices where women's and men's teams traveling the same distances for events at similar times of day differ in their arrival or departure times. The mode of transportation can affect arrival and departure times, and if problems are experienced by teams of one sex more than teams for the other sex, compliance problems in both factors may be the result.

Per Diem Allowances. The simplest way to comply is to provide the same per diem amount to all athletes. Otherwise, if some men's teams are provided with higher per diem amounts, then some women's teams should be provided the same higher per diem amounts. If the latter approach is preferred, aim for the same or similar percentages of male and female travel squad athletes to be provided this benefit. Avoid a common compliance problem where men's football and basketball are provided higher per diem allowances than all other men's and women's teams.

Dining Arrangements. The nature of sports and length of competition may determine when meals take place and whether pregame or postgame meals are appropriate. Compliance is analyzed by comparing the quality of the food and the establishment in which it is provided. Large team sports such as football, with the need to accommodate dozens of people at once, may make special arrangements at the hotel for meals. Golf tournaments may have special arrangements provided by the host country club. Compliance problems occur when meals for a team or teams for one sex routinely consist of much better quality food than that provided to other athletes. A common compliance problem is for men's football and basketball to be provided higher quality food or pre-

game and/or postgame meals that some women's teams may want but do not receive.

Opportunity to Receive Academic Tutoring, Assignment and Compensation of Tutors

Compliance is assessed for tutor availability, tutor qualifications and experience, rates of pay and employment conditions. This program area need not be reviewed if there is no academic advisor for athletics and no separate tutoring program for athletes.

Tutoring differs from other benefits because the need or desire for the benefit is an individual and not a team decision and not dependent on the nature of any sport. Analyses of either the percentages of male and female athletes receiving tutoring or the numbers of women's and men's teams provided tutoring are generally not appropriate. The same quality of tutors must be equally available to male and female athletes. Where this is true, there is compliance even if tutors are used significantly less by athletes of one sex.

Compliance problems in tutoring are unusual. When compliance problems occur, it is usually because certain teams, often men's football and basketball, are provided with their own academic advisors, special tutoring arrangements or priority in services.

Tutor Availability. An easy policy to ensure compliance is to set the same hours for tutor availability, such as at study hall sessions that are equally convenient for male and female athletes or for specific times throughout the day. Another nondiscriminatory policy is to provide tutors on a first-come, first-served sign-up basis. Any special tutoring arrangements should be equally available to female and male athletes.

Tutor Qualifications and Experience. Tutors often are upperclassmen, but also may include graduate students, faculty at the institution or other professional educators. An occasional compliance problem usually involves assignment of more qualified tutors to men's football and basketball teams.

Rates of Pay. The simplest way to comply is to pay all tutors the same wage regardless of qualifications. However, if different rates of pay are appropriate, the compliance problem to avoid is for tutors receiving higher pay rates to be assigned to athletes or teams of one sex more than athletes or teams of the other sex.

Employment Conditions. This factor refers to the number of students tutored per session and/or academic term, and any terms for employment. Where differences occur in the number of students tutored per session or academic term, a compliance problem occurs when, for example, female athletes have tutoring sessions in groups while male athletes are tutored one-on-one and receive more effective tutoring.

Other Considerations. Some athletics academic advisors make special arrangements for athletes in registration for classes. When there is a benefit such as ensuring athletes of desired courses or sparing athletes the inconvenience of the registration process, a compliance problem arises when the arrangements are made only or more often for teams or athletes of one sex than for teams or athletes of the other sex.

Opportunity to Receive Coaching, Assignment and Compensation of Coaches

Compliance is determined by analyzing availability, assignment and compensation of coaches.

Availability. Availability includes the number of coaches assigned to each team, length of contract, the percentage of time assigned to coaching, and employment conditions. Volunteer coaches should be excluded unless they receive incentives that affect their availability to teams.

Number of Coaches. A simple compliance approach is to provide the same number of coaches for women's and men's teams in the same sports and equivalent numbers for dissimilar sports. For example, if men's basketball has a head coach, two assistants and a restricted-earnings coach, then women's basketball should have the same. For dissimilar sports, coaches should be available to the same extent appropriate for the sports. For example, if the limit for head and assistant coaches is 10 for football

and two for volleyball, then providing 10 coaches for football and two coaches for volleyball should be equivalent. A common compliance problem is the provision of two assistant coaches for men's basketball and one assistant coach to women's basketball while all other coaching assignments are equitable. A general compliance problem is that fewer women's teams than men's teams have assistant coaches, and women's teams have no restricted-earnings coaches while men's teams do.

Length of Contract. The same percentages of coaches, or percentages as close as the numbers allow, in the women's and men's programs should have the same lengths of contract. For example, the men's program may have 25 coaches while the women's program has 13 coaches. If three of the 25, or 12 percent, of the men's coaches have multi-year contracts, then two of 13, or 15 percent of the women's coaches should have multi-year contracts. If 17 of 25, or 68 percent, of men's coaches have 12-month contracts, then nine of 13, or 69 percent, of women's coaches should have 12-month contracts. If five of 25, or 20 percent, of men's coaches have nine-month contracts, then the remaining two of 13, or 15 percent, of women's coaches should have nine-month contracts. Avoid two common compliance problems where: men's coaches have 12-month contracts while women's coaches have nine-month contracts; and, some men's coaches but no women's coaches have multi-year contracts.

Percentage of Time for Coaching. The full-time equivalency analysis used by OCR to address percentage of time for coaching is known to be flawed, but no other analysis has yet been recommended by the agency. The analysis suggested here should be considered a recommendation, not a requirement.

The percentage of time that coaches may be assigned coaching duties can vary considerably, for example, 100 percent coaching duties, 50 percent coaching and 50 percent teaching, or 25 percent coaching and 75 percent administrative duties. Once the correct numbers of coaches and the same percentages of coaches with contracts of the same length have been established for the women's and men's programs, the same percentages of coaches should be assigned coaching duties for the same percentages of time. For example, if 16 of 25, or 64 percent, of men's coaches have 100 percent coaching duties, then eight of 13, or 62 percent, of women's coaches should have 100 percent coaching duties. If eight of 25, or 32 percent, of men's coaches have coaching duties for half time, then four of 13, or 31 percent, of women's coaches should have coaching duties for half time. If one of 25 men's coaches, or four percent, has coaching duties for one-quarter time, then one of 13, or eight percent, of women's coaches should have coaching duties for one-quarter time.

One approach to compliance for coaching availability is establishing the same assignments for men's and women's teams in the same sports. For example, if men's basketball has a full-time head coach with two assistant coaches who are on nine-month contracts with 50 percent of their time coaching and 50 percent of their time teaching, then the women's basketball team should have the same assignment. For dissimilar sports, coaches should be assigned to the same extent of the maximum limits for the sports. A common compliance problem is the assignment of women's coaches to coaching duties for half of their time while men's coaches are assigned coaching duties for 100 percent of their time.

Employment Conditions. Additional duties for coaches such as teaching, administrative duties, student advisement or committee work should not affect availability of coaches in one program more than the other. Avoid the common concern where men's coaches teach racquetball and bowling while women's coaches teach more substantive courses such as kinesiology or anatomy and physiology, negatively affecting the availability of women's coaches.

Assignment. Assignment refers to qualifications. Compliance is achieved when the average years of experience is the same or similar for coaches in the women's and men's programs. The average years of college coaching experience should be determined separately. For example, if the 25 men's coaches have a total of 513 years of coaching, of which 347 years are at the college level, then men's coaches average 21 years of coaching experience with 14 years at the college level. If the 13 women's coaches

have a total of 208 years of coaching experience, of which 147 years are at the college level, then women's coaches average 16 years of coaching experience with 11 years at the college level.

Differences in average years of experience may be readily justified by coaching success at the regional and national levels and general won-lost records. A coach with five years of coaching experience may be a much better coach than someone with 20 years of experience, and level of success may indicate this. Avoid the common compliance problem where coaches with little or no experience are assigned to one or more women's teams while men's coaches have significantly more experience.

Compensation. Compliance is achieved when total dollars spent for salaries of men's and women's coaches are proportional to participation of men and women in the athletics program. For example, if men are 60 percent of the participants and women are 40 percent, then 60 percent of the coaching dollars should be provided to the men's program and 40 percent to the women's program. The salaries for all head coaches, assistant coaches, restricted-earnings coaches and graduate assistants should be included.

No statistical test or percentage point difference defines noncompliance. The Policy Interpretation states that there may be unique situations in which a particular person may possess such an outstanding record of achievement as to justify an abnormally high salary. Furthermore, compliance problems in compensation will not be cited unless policies or practices deny male and female athletes coaching of equivalent quality, nature or availability.

Specific comparisons of salaries for men's and women's coaches in the same sport, such as basketball, and fringe benefits provided to coaches are issues reviewed under the employment section of the Title IX regulation and not the athletics section. OCR and the Equal Employment Opportunity Commission, which enforces Title VII of the Civil Rights Act of 1964 and the Equal Pay Act, have both issued policy stating that discrimination in coaches' compensation must be based on the sex of the coach, not the sex of the athletes.

Locker Rooms, Practice and Competitive Facilities

All facilities are reviewed for availability, quality and exclusivity of use. Practice and competitive facilities also are reviewed for preparation and maintenance, and maintenance of locker rooms is considered when it affects quality.

Locker Rooms. Usually, compliance is achieved when the same number of women's and men's teams have locker rooms of the same quality, exclusively for their use. Calculating the percentages of athletes who receive this benefit may provide a less accurate analysis than numbers of teams because some teams (often cross country, golf and tennis, for example), or some athletes, choose not use locker rooms even when space is available.

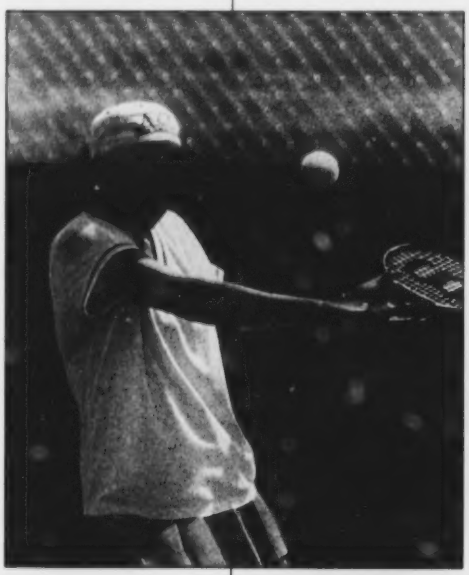
Quality involves a review of: adequacy for the number of athletes using the room at one time; the number, size and quality of lockers; seating; lighting; floor; numbers of commodes, sinks, showers, hair dryers and mirrors; cleanliness; space to meet or move around; lounge areas and furniture; TV, CD, stereo and VCR equipment; and special features such as refrigerators and training facilities located in the locker room.

Athletes who participate all year or have structured off-season conditioning may need the locker room all year. In less competitive programs, students may participate just during the sports season, and assigning fall and spring sports teams to the same locker room can be as equitable as providing two separate locker rooms.

Compliance problems in locker room space are common. Some common problems are: providing higher quality locker rooms to football and men's basketball teams than those provided to all women's teams; providing football and men's basketball with the only locker rooms exclusively for use of the respective teams; arranging for visiting teams to share locker rooms with women's teams but not men's teams; and assigning locker rooms to women's teams that are inconveniently located in relation to practice and competitive facilities, training rooms and other facilities while men's locker rooms are conveniently located.

Practice and Competitive Facilities. Compliance may be achieved when the same or similar numbers of women's and men's teams have facilities of equivalent quality exclusively for their use.

Availability of facilities may be directly related to the scheduling of facilities, and equitable scheduling may resolve compliance concerns for facilities. Availability also takes into consideration location if a facility or facilities only for teams of one sex are off campus and inconveniently located.



Analyzing quality involves evaluating the playing surface, seating capacity, lighting, scoreboards and similar features, and accommodations for the media and concessions. The features for facilities need not be identical to be equivalent. Exclusivity generally means exclusive use at the time when practices or contests are scheduled but may refer to facilities used only by a particular team.

Some common problems to avoid are: assigning a women's team or teams to facilities of poorer quality; not providing sufficient seating capacity for women's facilities; and providing electronic scoreboards and public-address systems for men's facilities and not for women's facilities.

Maintenance of Facilities. Some facilities require maintenance by professional staff, while the little maintenance required for other facilities may be performed by coaches and athletes. The comparison is whether maintenance is equivalently adequate, based on the needs of particular sports.

A simple approach for compliance is to have maintenance staff set the same maintenance schedule for women's and men's teams in the same sport, and schedule maintenance to be equivalently adequate for dissimilar sports. For example, maintenance staff might cut the grass once a week for softball and baseball. For football, cutting the grass once a week may be as adequate as cutting it twice a week for field hockey. A common problem is having maintenance staff cut the grass and line fields more often for men's teams than women's teams, or provide priority to men's teams so that facilities used by men's teams have adequate maintenance while women's team facilities do not.

Preparation of Facilities. Compliance is achieved when facilities are prepared to the same extent necessary, based on the nature of the sports, for women's and men's teams. For example, if maintenance staff line the baseball field every day for practice, then they should do so for softball. If maintenance staff cut the grass the day before each baseball game and line the field on game day, the same arrangement should be made for softball.

The preparation of facilities for competitive events also may involve putting out benches or chairs for players, setting up scorers' tables, public-address systems and media areas. Some common compliance problems occur when women's coaches and athletes sweep floors, line fields, or set up tables and chairs for practices or competitive events while maintenance staff perform these duties for men's teams.

Medical and Training Facilities and Services

Determining compliance involves evaluating the availability of medical personnel; availability and qualifications of trainers; availability and quality of training facilities; availability and quality of weight and conditioning facilities; and health, accident and injury insurance coverage.

Analyses of benefits based on percentages of athletes or numbers of teams generally are not appropriate. The nature of the sport and the likelihood for injury and coaches' reasonable professional decisions regarding the condition-

ing of athletes will determine services. Compliance problems are likely where benefits and services differ for women's and men's teams in the same sport. For dissimilar sports, compliance is determined by the extent to which benefits and services are provided to women's and men's teams based on needs identified by coaches, trainers and medical professionals.

Medical Personnel. Medical personnel should be equally available to female and male athletes for services such as physical examinations, evaluations of injured athletes, surgeries or other medical procedures. Also, transportation to medical assistance off campus should be equally available to male and female athletes.

The assignment of medical personnel to home games, away games and practices is dependent on the nature of the sport. The nature of the sport of football and size of the team can justify the assignment of medical staff even when no other sports have this benefit. The most common compliance problem is the assignment of a doctor to men's basketball games but not women's basketball games.

Trainers. The major distinction for trainer qualifications is between certified and noncertified trainers. Assuming similar participation numbers, women's and men's teams in the same sport should have identical assignments of certified trainers and student trainers at home games, away games and practices. Avoid the common compliance problem where certified trainers are assigned to men's basketball but not women's basketball, or a certified trainer is available at home and away games for the men's basketball team while the women's team has a certified trainer at home games and a student trainer at away games.

Football may require more time of both professional and student training staff than other sports. However, this may not justify less effective services for female athletes. A common problem in more competitive programs that offer football and have only one certified trainer on staff is that the trainer's time is taken up almost exclusively by football. This limitation often creates both compliance and safety concerns.

Weight Rooms. Football athletes may spend more time in weight rooms and use different equipment than other athletes. Several teams may use weight rooms sparingly or not at all. Furthermore, coaches for women's and men's teams in the same sport may disagree as to the best conditioning methods for their athletes, including whether to use heavy weights. Such differences are permitted when based on reasonable professional decisions.

If female athletes use one weight room while male athletes use another, the rooms should be equivalent in quality and equivalently adequate in terms of space and equipment provided. Adequate space and equipment are evaluated by how many athletes need to use the room at one time and the extent to which desired equipment is available. The rooms do not have to be the same size and have the same equipment to be equivalently adequate.

The simplest policy for ensuring compliance is to allow all athletes to use all weight rooms on a drop-in basis. If schedules must be made, then preferred times should be shared or alternated by female and male athletes.

Strength coaches may spend considerably more time with football than other sports. This is permissible when strength coaches are available to women's teams to an extent that is equivalently adequate.

Training Rooms. If women use one training room while men use another, the rooms should be equivalent in terms of adequacy, quality, including age and type of equipment, and accessibility to locker rooms, practice and competitive facilities. As with weight rooms, a simple approach for compliance is to allow all athletes to use all training rooms on a drop-in basis. If schedules must be set, then preferred times should be shared or alternated to ensure equitable scheduling. Avoid the common compliance problems of providing the better training room(s) to male athletes, providing men's teams priority in scheduling, and/or providing men's teams the most conveniently located training room(s).

Insurance. Usually, insurance policies cover costs that are not covered by the student's personal insurance for those health problems, accidents and injuries related to participation in

intercollegiate athletics. Generally, no premiums are charged to athletes. If athletes must pay premiums, those premiums should be the same for female and male athletes.

Gynecological Care. The only common compliance problem is the insurance policy that excludes gynecological care when health problems requiring such care are the result of athletics participation. Such a policy violates Section 106.39 of the Title IX regulation addressing student health insurance. The policy, and perhaps insurance companies, should be changed immediately.

Suggested Strategy. A common complaint of female athletes is that their injuries are not taken as seriously as those of male athletes by medical and training personnel and that male athletes have priority in treatment. Female athletes may not always share these concerns and should be asked about any concerns they may have regarding treatment by medical or training staff or whether they are intimidated or discouraged from using weight rooms or training rooms. Institutions have been cited for noncompliance because of unprofessional attitudes of medical and training staff that discouraged female athletes from seeking treatment.

Housing and Dining Facilities and Services

Determining compliance requires analyzing housing and dining benefits available during the regular academic year, the provision of pregame and postgame meals, and housing and dining services provided when classes are not in session.

The provision of housing and dining facilities and services may be affected by athletes' personal choices. During the regular academic year, compliance is achieved when any special housing and dining arrangements for athletes are equally available to the same or similar percentages of female and male athletes. Where this is true, there is compliance even if athletes choose not to take advantage of the benefits available. During times when classes are not in session, compliance is achieved when housing and dining are provided to the same extent for women's and men's teams wanting to be on campus at these times.

Housing. Any special housing privileges available to athletes must be equally available to female and male athletes. This includes dormitories where suites or other special accommodations are provided, priority in housing assignments, stipends for off-campus housing, or unique or special off-campus housing that may be arranged with an outside agency. If any athletes stay in hotels on the night before home games, this benefit should be equally available to women's and men's teams. Where benefits are equally available, there is compliance even when teams choose not to take advantage of these benefits.

Dining. If better quality or a greater quantity of food is available to any athletes, this should be available to the same percentages of male and female athletes. A common compliance problem is for football and men's basketball to be provided superior quantities and quality of food than that provided to all other athletes. If football and basketball constitute half of the male participants in the athletics program, then half of the female athletes should have this benefit available to them. This will be considered compliance even if that many female athletes choose not to take advantage of the benefit.

Some teams may choose to dine together even though food of no special quality or quantity is provided. This is not a benefit requiring equivalent accommodation.

Pregame and Postgame Meals. Special pregame and postgame meals should be equally available to female and male athletes. Again, where this is true, there is compliance even when teams choose not to take advantage of the benefits. The nature of particular sports and coaches' professional decisions about the conditioning of athletes often affect whether teams make arrangements for pregame or postgame meals. Thus, the simplest approach to analyzing compliance is usually determining which teams want such benefits and the extent to which the women's and men's teams that want the benefits actually receive them. Common compliance problems are: providing men's football and basketball pregame and/or

postgame meals while no women's teams receive such benefits; and providing only football and men's and women's basketball pregame and/or postgame meals even though other women's teams want this benefit.

A variation of the pregame, postgame meals benefit is when campus dining halls serve athletes at special hours or make boxed meals available to accommodate competitive and practice schedules. This service should be equally available to women's and men's teams.

Housing and Dining During School Breaks. A common compliance problem for housing and dining facilities and services arises not during the regular academic year but at times when classes are not in session, such as before classes begin in the fall, at the winter holiday and spring breaks, and during other intersessions that individual campuses may have. Basically, men's teams are provided sufficient funds to be on campus during these times while women's teams are not. The most common problem occurs for the sports of football and women's volleyball. Football is provided housing and dining funds that permit scheduling the maximum number of practices before the first competitive event while the volleyball team has limited funds, is on campus for less time, and schedules significantly less than the maximum number of practices before the first competitive event.

Similar problems occur during winter holiday and spring breaks where insufficient funds limit practice and occasionally competitive opportunities for women's teams while men's teams have adequate funding. Some teams prefer to travel during winter holiday or spring breaks, and adequate travel opportunities would be analyzed under the travel and per diem program area. Some coaches, even when adequate funding is available, choose to give athletes a break at these times or plan conditioning schedules that athletes may do on their own. Therefore, determining compliance involves analyzing the extent to which the women's and men's teams that want the benefits receive them.

Even when all teams that want to be on campus during these times are able to make such arrangements, compliance problems may occur when men's teams are provided better housing in hotels while women's teams are in campus dormitories; and more per diem is provided to male athletes than female athletes.

Publicity

Three factors are reviewed for compliance: availability and quality of sports information personnel; access to other publicity resources for men's and women's programs; and quantity and quality of publications and other promotional devices featuring women's and men's programs.

Sports Information Personnel. A simple compliance approach is to assign professional personnel to the same or similar numbers of women's and men's teams to the same extent and to assign student personnel in the same manner.

Quality. The major distinction in quality of sports information personnel is between professionals and students. For purposes of compliance, all professional staff are likely to be considered equally qualified unless there is a significant difference in years of experience and demonstrated quality of work.

Availability. Demands by the media may influence the amount of time that staff spend on particular teams. Unique circumstances, such as a team or individual athlete being a national champion or an athlete being an Olympic hopeful, may create imbalances in benefits for female and male athletes for short periods of time. These imbalances are permissible if opportunities for teams for the other sex are not limited.

The availability of staff is usually measured by the attendance of sports information personnel at home games, away games, and practices. Common compliance problems include: professional staff traveling with men's teams while student staff travel with women's teams; professional staff attending home games for several men's teams while attending home games for fewer or no women's teams, or only student staff attending women's home games; and student staff attending men's games but no staff attending women's games.

Publications. Publications may include media guides, game programs, schedule cards, posters and press releases. Quality includes consideration of the overall size of the publication, number of pages, type of paper and cover, and color versus black and white. The quantity of publications is as much a consideration of the number of women's and men's teams that have publications as the number of any publication provided for each team.

Media Guides. Media guides of equivalent quality should be provided to the same or similar numbers of women's and men's teams. Equivalent quality does not require that the guides be identical. For example, if men's guides have more pages to accommodate statistics for the longer history for the men's teams, this is not a compliance problem. Common problems occur, however, where men's teams are provided media guides while women's teams are not, or guides for men's teams are of much higher quality than those for women's teams.

Game Programs. Game programs of equivalent quality should be provided to the same or similar numbers of women's and men's teams. As with media guides, common problems occur when game programs are provided to some men's teams but not women's teams, or higher quality game programs are provided to men's teams.

Schedule Cards and Posters. Schedule cards and posters should be provided to the same or similar numbers of women's and men's teams. A common problem is providing these benefits to men's teams but not to women's teams.

Press Releases. A simple way to achieve compliance is to issue press releases at the same intervals for all teams that are in season. Another approach is to issue press releases for the same or similar numbers of women's and men's teams in similar quantities. A common problem is issuing releases regularly for men's teams and rarely for women's teams.

Other Publicity and Promotional Resources. Efforts to publicize, promote or market the women's and men's programs should be equivalent even if the result may not be equivalent. Avoid the common compliance problem where staff promote and publicize the men's program and make little or no efforts for the women's program.

Newspapers, Radio, and Television. Compliance is determined by the effort of institution staff to obtain media coverage for women's and men's teams and not by the result, as Title IX does not apply to the media. If the media cover men's events but refuse to cover women's events, institution staff should make continuing efforts at reasonable intervals to obtain coverage for women's events. Avoid the common compliance problem where institution staff direct all efforts at obtaining media coverage for men's teams and make no efforts to obtain coverage for any women's teams.

Support Groups. At competitive events where support groups such as cheerleaders, drill teams, the marching band or pep band are appropriate and welcome, they should be available to women's and men's teams on an equivalent basis, including home and away games. Avoid the common problem where such groups are provided to some men's teams but no women's teams.

Support Services

Compliance is determined by analyzing administrative support, clerical and secretarial support, office space, equipment and supplies, and availability of other support staff.

Administrative Support. Administrative support is difficult to quantify, and the need for support may vary significantly from team to team. Compliance is achieved when administrative support is equivalently adequate for the women's and men's programs. In other words, coaches in the women's and men's programs should spend approximately the same amount of time on administrative chores, and any

administrative tasks not accomplished should not adversely affect teams for one sex more than teams for the other sex.

Common compliance problems occur when: men's teams have administrative assistants while women's teams that need them do not; and administrative staff handle travel arrangements, equipment purchases, etc., for men's teams while women's coaches handle these tasks. Also, the coaches for revenue producing sports (e.g., football and men's basketball), may report directly to the athletics director while all other coaches report to an associate athletics director. This arrangement becomes a compliance problem if access to the athletics director results in priority services or better benefits for teams of one sex.

Secretarial Support. As with administrative support, the amount of secretarial support needed is likely to vary from team to team. Again, compliance is achieved when women's and men's coaches spend the same or similar amounts of time performing clerical tasks, and any tasks not performed do not adversely affect teams for one sex more than teams for the other sex.

A common compliance problem is that women's coaches generally must perform more clerical work than men's coaches. The assignment of secretarial staff specifically to the football and men's basketball teams while other teams must share other clerical support is a common situation and a potential compliance problem; however, the needs of all teams and the extent to which those needs are met must be reviewed for an accurate determination.

Office Space and Equipment. Office space may have been assigned to personnel based on their longevity at the institution, specific position or years of general experience. Compliance is achieved when women's and men's administrators and coaches have offices of equivalent quality and adequacy in equivalently convenient locations. Quality includes office size, available equipment such as computers, typewriters, phones, desks, tables, chairs, bookcases, carpeting, lighting, windows, air conditioning, and whether the office is shared. The number of women's and men's coaches with their own offices should be compared and, if necessary, the percentage of women's and men's coaches with their own offices may be compared. Some common compliance problems occur when: women's coaches share offices more than men's coaches; and women's coaches' offices are more often inconveniently located to secretarial and administrative support stations.

Other Support Staff. Other support staff whose functions and availability may affect compliance may include security personnel, ticket takers, concession workers, scorekeepers and public-address announcers, audio-visual specialists, and printing services personnel. Essentially, the services provided by all professional and student staff who support the athletics program should be equivalently adequate for women's and men's teams.

Recruitment of Student-Athletes

Determining compliance involves a review of: opportunities for coaches or other personnel to recruit; whether financial and other resources are equivalently adequate; and treatment of prospective student-athletes.

Opportunity to Recruit. The opportunity to recruit is analyzed in the same manner as the opportunity to receive coaching. The same considerations are made regarding the number of coaches assigned to each team, length of contract, percentage of time assigned to coaching, and employment conditions. Any circumstances affecting coaching availability may affect the opportunity to recruit. The section on availability of coaches should be reviewed and applied here.

Avoid the common compliance problems that affect the opportunity to recruit: fewer assistant coaches assigned to women's teams; women's coaches assigned contracts of shorter duration; and women's coaches assigned less time to coaching duties.

Financial and Other Resources. Funds and resources for recruitment may include the following: funds for coaches' travel to observe athletes or make home visits; recruitment mailings and telephone use; recruitment brochures and videos; subscriber dues for recruitment services; funds for visits by prospective student athletes; and courtesy cars provided for recruitment. One of the most common compliance problems for athletics programs occurs in

recruitment; that is, men's programs spend disproportionately more for recruitment than women's programs.

Compliance is Proportionate Dollars. Compliance is achieved when dollars budgeted and spent for female and male athletes are proportional to their respective rates of participation. That is, if women are 40 percent of the participants and men are 60 percent, then 40 percent of the recruitment dollars should be allocated to the women's program and 60 percent to the men's program. No statistical tests or percentage point differences have been established that define noncompliance.

Some justifications for disproportionate spending are acceptable. Team needs for any particular year may vary where, for example, a large number of athletes graduate in a given year. Recruitment needs for teams to be added to the program also may create a significant imbalance between the women's and men's programs.

Coaches' Travel. Coaches' travel often is a major portion of recruitment expenditures. For some sports, many highly skilled athletes may be in close proximity to the institution, while for other sports coaches must travel much farther to recruit the same quality athletes. Avoid the occasional compliance problem where women's coaches are restricted in the distance they may travel to recruit while men's coaches are not.

Recruitment Videos and Brochures. Costs for producing videos and brochures should be included in determining proportionate spending for recruitment. Videos and/or brochures should be produced for the same or similar numbers of women's and men's teams. Avoid the occasional compliance problem where videos and/or brochures are produced for men's teams but not women's teams.

Courtesy Cars. Courtesy cars may be provided to coaches for their personal use and, as such, are considered a fringe benefit analyzed under employment. The availability of courtesy cars is analyzed for recruitment to the extent such cars are used for recruitment purposes. Sex-neutral policies in providing courtesy cars will be acceptable where the effect is nondiscriminatory. For example, compliance is likely where courtesy cars are provided to all women's and men's head coaches. Another compliance approach is to provide cars to equivalent percentages of men's and women's coaches. Avoid the common compliance problem where coaches for men's teams, often football and men's basketball, are provided courtesy cars while no women's coaches have this benefit.

Subsidized Visits. Funds needed may vary significantly based primarily on the costs for the students' travel, but overall funding for women's and men's programs should be proportionate to participation. If an institution has the funds to transport a prospective athlete from Australia for the men's program, the same opportunity should be available to the women's program.

Mail and Telephone. Mail and telephone expenditures should be added to calculations for proportionate spending. Total phone and mail budgets and expenditures should be used when costs specifically for recruitment cannot be determined. Avoid the occasional compliance problem where phone or mail services have dollar limits for women's teams while no limits are imposed on men's teams.

Recruitment Services. Subscriber or membership dues for recruitment services and/or publications should be included in calculating proportionate dollar allocations. Avoid practices such as providing this benefit to teams for one sex but not teams for the other sex.

Treatment of Prospective Student-Athletes. A fully subsidized visit usually pays for transportation, housing, meals and entertainment, while a partially subsidized visit covers something less than all four benefits. Compliance is achieved when female and male prospective athletes receive equivalent treatment and are provided fully and partially subsidized visits at the same or very nearly the same proportion as men's and women's respective rates of participation. That is, if 60 percent of the participants are men and 40 percent are women, then 60 percent of the fully subsidized visits should be for men and 40 percent for women. The same calculation should be made for partially subsidized visits. Treatment may differ for specific prospective athletes when treatment of female and male prospective athletes overall is equivalent.

Transportation. A simple way to achieve compliance is for the mode of transportation to be dependent on the distance traveled. Avoid such

practices as providing air fare to prospective male athletes but not to prospective female athletes, and establishing limits on the distance traveled by prospective female athletes while no limits are imposed for prospective male athletes.

Housing. A simple way to achieve compliance is to establish a uniform policy, for example, all prospective athletes stay in the same hotel or hotels of the same quality, or all prospective athletes stay in dormitories. Avoid such practices as housing all prospective male athletes in hotels and all prospective female athletes in dormitories.

Meals. As with housing, a simple compliance approach is to arrange for prospective athletes to dine in campus dining halls or for all prospective athletes to dine at the same restaurant or restaurants of equivalent quality. Avoid such practices as providing dining for all prospective male athletes at restaurants while all prospective female athletes dine in campus dining halls.

Entertainment. The type of entertainment may vary considerably and may include facilities tours, academic interviews with professors or administrators, admission to institution sporting events, and/or money provided to student hosts to entertain prospective athletes. An obvious compliance problem occurs where prospective male athletes receive entertainment benefits while female prospective athletes do not.

Other Expenses. Another consideration is whether the institution pays the meals and lodging expenses of the prospective athlete's parents or guardians during the prospect's official paid visit to accompany their daughter or son. This benefit should be available for female and male prospective athletes to the same extent. Where this is true, there is compliance even if more prospective athletes of one sex choose not to take advantage of this benefit.

Conclusion

Achieving compliance with Title IX need not be difficult, even for programs that currently have serious compliance problems. Many benefits for male and female athletes may be shared to achieve compliance; other benefits may be provided on an alternating basis. The flexibility allowed under the Policy Interpretation permits a range of options for resolving any compliance concern. Those options often include inexpensive resolutions that do not involve eliminating benefits for some students to improve those benefits for other students.

Compliance does require effort, planning and occasionally imagination. Athletics administrators may need to develop specific guidelines to ensure that their students do not experience discrimination. Those guidelines, however, do not have to infringe on reasonable decisions of personnel. The Policy Interpretation permits reasonable professional decisions and the nature of particular sports to determine benefits and, in general, ensures the autonomy of athletics administrators. Under the law, athletics administrators have every opportunity to provide equal opportunity to all of their students and still meet the other challenges of their positions.

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Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test

The following is the text of the policy guidance clarification issued January 16, 1996, by the Office for Civil Rights.

The Office for Civil Rights (OCR) enforces Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. (Title IX), which prohibits discrimination on the basis of sex in education programs and activities by recipients of federal funds. The regulation implementing Title IX, at 34 C.F.R. Part 106, effective July 21, 1975, contains specific provisions governing athletics programs, at 34 C.F.R. § 106.41, and the awarding of athletics scholarships, at 34 C.F.R. § 106.37(c). Further clarification of the Title IX regulatory requirements is provided by the Intercollegiate Athletics Policy Interpretation, issued December 11, 1979 [44 Fed. Reg. 71413 et seq. (1979)].[1]

The Title IX regulation provides that if an institution sponsors an athletics program, it must provide equal athletics opportunities for members of both sexes. Among other factors, the regulation requires that an institution must effectively accommodate the athletics interests and abilities of students of both sexes to the extent necessary to provide equal athletics opportunity.

The 1979 Policy Interpretation provides that as part of this determination, OCR will apply the following three-part test to assess whether an institution is providing nondiscriminatory participation opportunities for individuals of both sexes:

1. Whether intercollegiate level participation opportunities for male and female students are provided in numbers substantially proportionate to their respective enrollments; or

2. Where the members of one sex have been and are underrepresented among intercollegiate athletes, whether the institution can show a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or

3. Where the members of one sex are underrepresented among intercollegiate athletes, and the institution cannot show a history and continuing practice of program expansion, as described above, whether it can be demonstrated that the interests and abilities of the members of that sex have been fully and effectively accommodated by the present program.

[44 Fed. Reg. at 71418.]

Thus, the three-part test furnishes an institution with three individual avenues to choose from when determining how it will provide individuals of each sex with nondiscriminatory opportunities to participate in intercollegiate athletics. If an institution has met any part of the three-part test, OCR will determine that the institution is meeting this requirement.

It is important to note that under the Policy Interpretation, the requirement to provide nondiscriminatory participation opportunities is only one of the many factors that OCR examines to determine if an institution is in compliance with the athletics provision of Title IX. OCR also considers the quality of competition offered to members of both sexes in order to determine whether an institution effectively accommodates the interests and abilities of its students.

In addition, when an "overall determination of compliance" is made by OCR, 44 Fed. Reg. 71417, 71418, OCR examines the institution's program as a whole. Thus, OCR considers the effective accommodation of interests and abilities in conjunction with equivalence in the availability, quality and kinds of other athletics benefits and opportunities provided male and female athletes to determine whether an institution provides equal athletics opportunity as required by Title IX. These other benefits include coaching, equipment, practice and competitive facilities, recruitment, scheduling of games, and publicity, among others. An institution's failure to provide nondiscriminatory participation opportunities usually amounts to a denial of equal athletics opportunity because these opportunities provide access to all other athletics benefits, treatment, and services.

This Clarification provides specific factors that

[1] The Policy Interpretation is designed for intercollegiate athletics. However, its general principles, and those of this Clarification, often will apply to elementary and secondary interscholastic athletics programs, which also are covered by the regulation. See 44 Fed. Reg. 71413.

guide an analysis of each part of the three-part test. In addition, it provides examples to demonstrate, in concrete terms, how these factors will be considered. These examples are intended to be illustrative, and the conclusions drawn in each example are based solely on the facts included in the example.

Three-part test — Part One: *Are Participation Opportunities Substantially Proportionate to Enrollment?*

Under part one of the three-part test (part one), where an institution provides intercollegiate level athletics opportunities for male and female students in numbers substantially proportionate to their respective full-time undergraduate enrollments, OCR will find that the institution is providing nondiscriminatory participation opportunities for individuals of both sexes.

OCR's analysis begins with a determination of the number of participation opportunities afforded to male and female athletes in the intercollegiate athletics program. The Policy Interpretation defines participants as those athletes:

a. Who are receiving the institutionally-sponsored support normally provided to athletes competing at the institution involved, e.g., coaching, equipment, medical and training room services, on a regular basis during a sport's season; and

b. Who are participating in organized practice sessions and other team meetings and activities on a regular basis during a sport's season; and

c. Who are listed on the eligibility or squad lists maintained for each sport; or

d. Who, because of injury, cannot meet a, b, or c above but continue to receive financial aid on the basis of athletics ability.

[44 Fed. Reg. at 71415.]

OCR uses this definition of participant to determine the number of participation opportunities provided by an institution for purposes of the three-part test.

Under this definition, OCR considers a sport's season to commence on the date of a team's first intercollegiate competitive event and to conclude on the date of the team's final intercollegiate competitive event. As a general rule, all athletes who are listed on a team's squad or eligibility list and are on the team as of the team's first competitive event are counted as participants by OCR. In determining the number of participation opportunities for the purposes of the interests and abilities analysis, an athlete who participates in more than one sport will be counted as a participant in each sport in which he or she participates.

In determining participation opportunities, OCR includes, among others, those athletes who do not receive scholarships (e.g., walk-ons), those athletes who compete on teams sponsored by the institution even though the team may be required to raise some or all of its operating funds, and those athletes who practice but may not compete. OCR's investigations reveal that these athletes receive numerous benefits and services, such as training and practice time, coaching, tutoring services, locker-room facilities, and equipment, as well as important nontangible benefits derived from being a member of an intercollegiate athletics team. Because these are significant benefits, and because receipt of these benefits does not depend on their cost to the institution or whether the athlete competes, it is necessary to count all athletes who receive such benefits when determining the number of athletics opportunities provided to men and women.

OCR's analysis next determines whether athletics opportunities are substantially proportionate. The Title IX regulation allows institutions to operate separate athletics programs for men and women. Accordingly, the regulation allows an institution to control the respective number of participation opportunities offered to men and women. Thus, it could be argued that to satisfy part one there should be no difference between the participation rate in an institution's intercollegiate athletics program and its full-time undergraduate enrollment.

However, because in some circumstances it may be unreasonable to expect an institution to achieve exact proportionality — for instance, because of natural fluctuations in enrollment and participation rates or because it would be unreasonable to expect an institution to add athletics opportunities in light of the small number of students that would have to be accommodated to achieve exact proportionality — the Policy Interpretation examines whether participation opportunities are "substantially" proportionate to enrollment rates. Because this determination depends on the institution's specific circumstances and the size of its athletics program, OCR makes this determination on a case-by-case basis, rather than through use of a statistical test.

As an example of a determination under part one: If an institution's enrollment is 52 percent male and 48 percent female and 52 percent of the participants in the athletics program are male and 48 percent female, then the institution would clearly satisfy part one. However, OCR recognizes that natural fluctuations in an institution's enrollment and/or participation rates may affect the percentages in a subsequent year. For instance, if the institution's admissions the following year resulted in an enrollment rate of 51 percent males and 49 percent females, while the participation rates of males and females in the athletics program remained constant, the institution would continue to satisfy part one because it would be unreasonable to expect the institution to fine-tune its program in response to this change in enrollment.

As another example, over the past five years an institution has had a consistent enrollment rate for women of 50 percent. During this time period, it has been expanding its program for women in order to reach proportionality. In the year that the institution reaches its goal — i.e., 50 percent of the participants in its athletics program are female — its enrollment rate for women increases to 52 percent. Under these circumstances, the institution would satisfy part one.

OCR would also consider opportunities to be substantially proportionate when the number of opportunities that would be required to achieve proportionality would not be sufficient to sustain a viable team, i.e., a team for which there is a sufficient number of interested and able students and enough available competition to sustain an intercollegiate team. As a frame of reference in assessing this situation, OCR may consider the average size of teams offered for the underrepresented sex, a number which would vary by institution.

For instance, Institution A is a university with a total of 600 athletes. While women make up 52 percent of the university's enrollment, they represent only 47 percent of its athletes. If the university provided women with 52 percent of athletics opportunities, approximately 62 additional women would be able to participate. Because this is a significant number of unaccommodated women, it is likely that a viable sport could be added. If so, Institution A has not met part one.

As another example, at Institution B women also make up 52 percent of the university's enrollment and represent 47 percent of Institution B's athletes. Institution B's athletics program consists of only 60 participants. If the university provided women with 52 percent of athletics opportunities, approximately six additional women would be able to participate. Since six participants are unlikely to support a viable team, Institution B would meet part one.

Three-part test[4] — Part Two: *Is There a History and Continuing Practice of Program Expansion for the Underrepresented Sex?*

Under part two of the three-part test (part two), an institution can show that it has a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the underrepresented sex. In effect, part two looks at an institution's past and continuing remedial efforts to provide nondiscriminatory participation opportunities through program expansion.[2]

OCR will review the entire history of the athletics program, focusing on the participation opportunities provided for the underrepresented sex. First, OCR will assess whether past actions of the institution have expanded participation opportunities for the underrepresented sex in a manner that was demonstrably responsive to their developing interests and abilities. Developing interests include interests that already exist at the institution.[3]

There are no fixed intervals of time within which an institution must have added participation opportunities. Neither is a particular number of sports dispositive. Rather, the focus is on whether the program expansion was responsive to developing interests and abilities of the underrepresented sex. In addition, the institution must demonstrate a continuing (i.e., present) practice of program expansion as warrant-

[2] Part two focuses on whether an institution has expanded the number of intercollegiate participation opportunities provided to the underrepresented sex. Improvements in the quality of competition, and of other athletics benefits, provided to women athletes, while not considered under the three-part test, can be considered by OCR in making an overall determination of compliance with the athletics provision of Title IX.

[3] However, under this part of the test an institution is not required, as it is under part three, to accommodate all interests and abilities of the underrepresented sex. Moreover, under part two, an institution has flexibility in choosing which teams it adds for the underrepresented sex, as long as it can show overall a history and continuing practice of program expansion for members of that sex.

ed by developing interests and abilities.

OCR will consider the following factors, among others, as evidence that may indicate a history of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex:

- An institution's record of adding intercollegiate teams, or upgrading teams to intercollegiate status, for the underrepresented sex;
- An institution's record of increasing the numbers of participants in intercollegiate athletics who are members of the underrepresented sex; and
- An institution's affirmative responses to requests by students or others for addition or elevation of sports.

OCR will consider the following factors, among others, as evidence that may indicate a continuing practice of program expansion that is demonstrably responsive to the developing interests and abilities of the underrepresented sex:

- An institution's current implementation of a nondiscriminatory policy or procedure for requesting the addition of sports (including the elevation of club or intramural teams) and the effective communication of the policy or procedure to students; and
- An institution's current implementation of a plan of program expansion that is responsive to developing interests and abilities.

OCR would also find persuasive an institution's efforts to monitor developing interests and abilities of the underrepresented sex, for example, by conducting periodic nondiscriminatory assessments of developing interests and abilities and taking timely actions in response to the results.

In the event that an institution eliminated any team for the underrepresented sex, OCR would evaluate the circumstances surrounding this action in assessing whether the institution could satisfy part two of the test. However, OCR will not find a history and continuing practice of program expansion where an institution increases the proportional participation opportunities for the underrepresented sex by reducing opportunities for the overrepresented sex alone or by reducing participation opportunities for the overrepresented sex to a proportionately greater degree than for the underrepresented sex. This is because part two considers an institution's good-faith remedial efforts through actual program expansion. It is only necessary to examine part two if one sex is overrepresented in the athletics program. Cuts in the program for the underrepresented sex, even when coupled with cuts in the program for the overrepresented sex, cannot be considered remedial because they burden members of the sex already disadvantaged by the present program. However, an institution that has eliminated some participation opportunities for the underrepresented sex can still meet part two if, overall, it can show a history and continuing practice of program expansion for that sex.

In addition, OCR will not find that an institution satisfies part two where it established teams for the underrepresented sex only at the initiation of its program for the underrepresented sex or where it merely promises to expand its program for the underrepresented sex at some time in the future.

The following examples are intended to illustrate the principles discussed above.

At the inception of its women's program in the mid-1970s, Institution C established seven teams for women. In 1984 it added a women's varsity team at the request of students and coaches. In 1990 it upgraded a women's club sport to varsity team status based on a request by the club members and an NCAA survey that showed a significant increase in girls' high-school participation in that sport. Institution C is currently implementing a plan to add a varsity women's team in the spring of 1996 that has been identified by a regional study as an emerging women's sport in the region. The addition of these teams resulted in an increased percentage of women participating in varsity athletics at the institution. Based on these facts, OCR would find Institution C in compliance with part two because it has a history of program expansion and is continuing to expand its program for women in response to their developing interests and abilities.

By 1980, Institution D established seven teams for women. Institution D added a women's varsity team in 1983 based on the requests of students and coaches. In 1991 it added a women's varsity team after an NCAA survey showed a significant increase in girls' high-school participation in that sport. In 1993 Institution D eliminated a viable women's team and a viable men's team in an effort to reduce its athletics budget. It has taken no action relating to the underrepresented sex since 1993. Based on these facts, OCR would not find Institution D

in compliance with part two. Institution D cannot show a continuing practice of program expansion that is responsive to the developing interests and abilities of the underrepresented sex where its only action since 1991 with regard to the underrepresented sex was to eliminate a team for which there was interest, ability and available competition.

In the mid-1970s, Institution E established five teams for women. In 1979 it added a women's varsity team. In 1984 it upgraded a women's club sport with 25 participants to varsity team status. At that time, it eliminated a women's varsity team that had eight members. In 1987 and 1989 Institution E added women's varsity teams that were identified by a significant number of its enrolled and incoming female students when surveyed regarding their athletics interests and abilities. During this time it also increased the size of an existing women's team to provide opportunities for women who expressed interest in playing that sport. Within the past year, it added a women's varsity team based on a nationwide survey of the most popular girls' high-school teams. Based on the addition of these teams, the percentage of women participating in varsity athletics at the institution has increased. Based on these facts, OCR would find Institution E in compliance with part two because it has a history of program expansion and the elimination of the team in 1984 took place within the context of continuing program expansion for the underrepresented sex that is responsive to their developing interests.

Institution F started its women's program in the early 1970s with four teams. It did not add to its women's program until 1987 when, based on requests of students and coaches, it upgraded a women's club sport to varsity team status and expanded the size of several existing women's teams to accommodate significant expressed interest by students. In 1990 it surveyed its enrolled and incoming female students; based on that survey and a survey of the most popular sports played by women in the region, Institution F is implementing a plan to add a women's teams by the spring of 1997. Based on these facts, OCR would find Institution F in compliance with part two. Institution F's program history since 1987 shows that it is committed to program expansion for the underrepresented sex and it is continuing to expand its women's program in light of women's developing interests and abilities.

Three-part test — Part Three: *Is the Institution Fully and Effectively Accommodating the Interests and Abilities of the Underrepresented Sex?*

Under part three of the three-part test (part three) OCR determines whether an institution is fully and effectively accommodating the interests and abilities of its students who are members of the underrepresented sex — including students who are admitted to the institution though not yet enrolled. Title IX provides that a recipient must provide equal athletics opportunity to its students. Accordingly, the Policy Interpretation does not require an institution to accommodate the interests and abilities of potential students.[4]

While disproportionately high athletics participation rates by an institution's students of the overrepresented sex (as compared to their enrollment rates) may indicate that an institution is not providing equal athletics opportunities to its students of the underrepresented sex, an institution can satisfy part three where there is evidence that the imbalance does not reflect discrimination, i.e., where it can be demonstrated that, notwithstanding disproportionately low participation rates by the institution's students of the underrepresented sex, the interests and abilities of these students are, in fact, being fully and effectively accommodated.

In making this determination, OCR will consider whether there is (a) unmet interest in a particular sport; (b) sufficient ability to sustain a team in the sport; and (c) a reasonable expectation of competition for the team. If all three conditions are present, OCR will find that an institution has not fully and effectively accommodated the interests and abilities of the underrepresented sex.

If an institution has recently eliminated a viable team from the intercollegiate program, OCR will find that there is sufficient interest, ability and available competition to sustain an intercollegiate team in that sport unless an institution can provide strong evidence that interest, ability or available competition no longer exists.

[4] However, OCR does examine an institution's recruitment practices under another part of the Policy Interpretation. See 44 Fed. Reg. 71417. Accordingly, where an institution recruits potential student-athletes for its men's teams, it must ensure that women's teams are provided with substantially equal opportunities to recruit potential student-athletes.

a) Is there sufficient unmet interest to support an intercollegiate team?

OCR will determine whether there is sufficient unmet interest among the institution's students who are members of the underrepresented sex to sustain an intercollegiate team. OCR will look for interest by the underrepresented sex as expressed through the following indicators, among others:

- Requests by students and admitted students that a particular sport be added;
- Requests that an existing club sport be elevated to intercollegiate team status;
- Participation in particular club or intramural sports;
- Interviews with students, admitted students, coaches, administrators and others regarding interest in particular sports;
- Results of questionnaires of students and admitted students regarding interests in particular sports; and
- Participation in particular interscholastic sports by admitted students.

In addition, OCR will look at participation rates in sports in high schools, amateur athletics associations and community sports leagues that operate in areas from which the institution draws its students in order to ascertain likely interest and ability of its students and admitted students in particular sport(s).[5]

For example, where OCR's investigation finds that a substantial number of high schools from the relevant region offer a particular sport which the institution does not offer for the underrepresented sex, OCR will ask the institution to provide a basis for any assertion that its students and admitted students are not interested in playing that sport. OCR may also interview students, admitted students, coaches and others regarding interest in that sport.

An institution may evaluate its athletics program to assess the athletics interest of its students of the underrepresented sex using nondiscriminatory methods of its choosing. Accordingly, institutions have flexibility in choosing a nondiscriminatory method of determining athletics interests and abilities provided they meet certain requirements. See 44 Fed. Reg. at 71417. These assessments may use straightforward and inexpensive techniques, such as a student questionnaire or an open forum, to identify students' interests and abilities. Thus, while OCR expects that an institution's assessment should reach a wide audience of students and should be open-ended regarding the sports students can express interest in, OCR does not require elaborate scientific validation of assessments.

An institution's evaluation of interest should be done periodically so that the institution can identify in a timely and responsive manner any developing interests and abilities of the underrepresented sex. The evaluation should also take into account sports played in the high schools and communities from which the institution draws its students both as an indication of possible interest on campus and to permit the institution to plan to meet the interests of admitted students of the underrepresented sex.

b) Is there sufficient ability to sustain an intercollegiate team?

Second, OCR will determine whether there is sufficient ability among interested students of the underrepresented sex to sustain an intercollegiate team. OCR will examine indications of ability such as:

- The athletics experience and accomplishments — in interscholastic, club or intramural competition — of students and admitted students interested in playing the sport;
- Opinions of coaches, administrators and athletes at the institution regarding whether interested students and admitted students have the potential to sustain a varsity team; and
- If the team has previously competed at the club or intramural level, whether the competitive experience of the team indicates that it has the potential to sustain an intercollegiate team.

Neither a poor competitive record nor the inability of interested students or admitted students to play at the same level of competition engaged in by the institution's other athletes is conclusive evidence of lack of ability. It is sufficient that interested students and admitted students have the potential to sustain an intercollegiate team.

c) Is there a reasonable expectation of competition for the team?

Finally, OCR determines whether there is a reasonable expectation of intercollegiate competition for a particular sport in the institution's normal competitive region. In evaluating avail-

[5] While these indications of interest may be helpful to OCR in ascertaining likely interest on campus, particularly in the absence of more direct indicia, an institution is expected to meet the actual interests and abilities of its students and admitted students.

able competition, OCR will look at available competitive opportunities in the geographic area in which the institution's athletes primarily compete, including:

- Competitive opportunities offered by other schools against which the institution competes; and
- Competitive opportunities offered by other schools in the institution's geographic area, including those offered by schools against which the institution does not now compete.

Under the Policy Interpretation, the institution may also be required to actively encourage the development of intercollegiate competition for a sport for members of the underrepresented sex when overall athletics opportunities within its competitive region have been historically limited for members of that sex.

Conclusion

This discussion clarifies that institutions have three distinct ways to provide individuals of each sex with nondiscriminatory participation opportunities. The three-part test gives institutions flexibility and control over their athletics programs. For instance, the test allows institutions to respond to different levels of interest by its male and female students. Moreover, nothing in the three-part test requires an institution to eliminate participation opportunities for men.

At the same time, this flexibility must be used by institutions consistent with Title IX's requirement that they not discriminate on the basis of sex. OCR recognizes that institutions face challenges in providing nondiscriminatory participation opportunities for their students and will continue to assist institutions in finding ways to meet these challenges.

U.S. Department of Education
Office for Civil Rights
January 16, 1996

PART III

CURRENT CASE LAW

Current Case Law

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A Guide to Recent Developments in Title IX Litigation—September 1, 1996

Introduction

The following summary was prepared by Judith Jurin Semo and John F. Bartos Jr. of Squire, Sanders & Dempsey, NCAA Washington counsel.

Title IX of the Education Amendments of 1972[1] is the principal Federal gender-equity legislation that applies to intercollegiate athletics programs. The statute provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."[2] Essentially, the law prohibits gender-based discrimination in any education program or activity receiving Federal financial assistance.[3] The application of the statute to athletics has been detailed through regulation,[4] the intercollegiate athletics policy interpretation of the Department of Education's Office for Civil Rights (OCR),[5] the "OCR Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test,"[6] and decisions of the Federal and state courts.

Although there is no express statutory provision empowering a private party to bring suit to enforce Title IX, the Supreme Court held in Cannon v. University of Chicago[7] that such a right is implied in the statute. Until 1992, it was generally believed that courts could grant only equitable relief, such as injunctions, not monetary damages, for Title IX violations. In Franklin v. Gwinnett County Public Schools,[8] however, the Supreme Court ruled that, at least with reference to intentional violations of Title IX, a private party could collect monetary damages.

With the exception of the January 1996 OCR Clarification of Intercollegiate Athletics Policy Guidance, it has been mostly through court decisions that the requirements of Title IX have been interpreted over the past four years. During this time, several cases have been decided that provide insight into how compliance with Title IX will be determined. Settlements reached between plaintiffs and educational institutions provide further guidance on the Title IX issues facing colleges and universities today. The first part of this summary discusses the basic requirements of Title IX and explains how courts (through published opinions) and individual plaintiffs and institutions (through settlements) have interpreted these requirements. The second part explores related issues that arise in Title IX cases, such as the burden of proof, the type of relief which the courts may award, and the other claims that often are advanced in Title IX actions, as well as the cases being brought by coaches of women's sports.

Part I: Requirements of Title IX

The Title IX regulation and policy interpretation require that: (1) athletically related financial assistance be allocated in proportion to the numbers of male and female students participating in intercollegiate athletics; (2) all other benefits, opportunities and treatment afforded

[1] 20 U.S.C. §§ 1681-1687 (1988), as amended by the Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28 (1988) (codified at 20 U.S.C. § 1687).

[2] 20 U.S.C. § 1681(a) (1992).

[3] In 1988, reacting to the Supreme Court decision in Grove City College v. Bell, 465 U.S. 555 (1984), which limited the application of Title IX to those specific educational programs that received Federal assistance, Congress passed the Civil Rights Restoration Act. This Act made it clear that Title IX applies to all operations of a higher education institution if any part of the institution receives Federal financial assistance.

[4] The regulation currently appears at 34 C.F.R. Part 106 (1995).

[5] Title IX of the Education Amendments of 1972; A Policy Interpretation; Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71,413 (Dec. 11, 1979).

[6] Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test (January 16, 1996).

[7] 441 U.S. 677 (1979).

[8] 503 U.S. 60 (1992).

participants of each sex be equivalent; and (3) the interests and abilities of students be effectively accommodated to the extent necessary to provide equal athletics opportunity for members of both sexes. Departures from these requirements are permitted if justified by factors determined to be nondiscriminatory.

The assessment whether an institution has satisfied the requirements of Title IX is made on a program-wide basis, rather than on a sport-by-sport comparison.

Athletically Related Financial Assistance

With respect to athletically related financial assistance, compliance is measured by financial proportionality to participation: the total amount of athletics aid awarded to men and to women must be substantially proportional to their respective rates of participation in the intercollegiate athletics program. For example, if an institution awards $600,000 of athletics aid and has 200 male participants and 100 female participants, about $400,000 in aid must be awarded to men and about $200,000 to women. If the amounts are substantially proportionate or any disparity can be explained by nondiscriminatory factors, the institution will be found to be in compliance.

Although litigation of Title IX issues has risen dramatically in the past few years, this requirement has received scant attention from the courts. In Gonyo v. Drake University,[9] the U.S. District Court for the District of Iowa concluded that the over-allocation of athletically related financial assistance to the underrepresented sex did not violate Title IX. The case arose when a group of former wrestlers sought reinstatement of the men's wrestling program at Drake. The wrestlers contended that the institution violated Title IX because athletics scholarships were not being awarded in proportion to the number of students of each sex participating in athletics. More athletics scholarship dollars went to women than to men even though 59.7 percent of Drake's athletes were men. The court found that the claim was lacking since Drake had provided legitimate, nondiscriminatory reasons for the disparity and none of the plaintiffs had lost a scholarship as a result of the university's decision.

Other Athletics Program Areas

In evaluating athletics program components other than financial aid, the basic test of compliance is equivalence. The availability, quality and kinds of benefits, opportunities, and treatment afforded to the members of each sex must be equal or equal in effect, unless disparities are justified by factors determined to be nondiscriminatory. An institution's intercollegiate athletics program is to be examined as a whole. Thus, differences favoring one sex in one program component may be offset by differences favoring the other sex in other program components. Although financial measures are used to assess equivalency in many areas, expenditures and budgetary allocations alone do not determine whether an institution is in compliance. The following factors have been identified by OCR as nondiscriminatory considerations that may justify departures from equivalency: unique aspects of particular sports (but not including the capacity to produce revenue), special circumstances of a temporary nature, special event management needs of spectator sports and voluntary affirmative action.

The U.S. District Court for the Northern District of New York, in Cook v. Colgate University,[10] is the only court to have issued a reported decision in recent years analyzing these require-

[9] 837 F. Supp. 989 (S.D. Iowa 1993).

[10] 802 F. Supp. 737 (N.D.N.Y. 1992), vacated as moot, 992 F.2d 17 (2d Cir. 1993).

ments. (Although the lower court's decision subsequently was vacated for procedural reasons — all of the plaintiffs had graduated and could not benefit from an order requiring equal athletics opportunities for women ice hockey players[11] — its opinion remains important to understanding the current state of the law regarding Title IX.) The case arose when former members of the women's club ice hockey team challenged Colgate's decision to reject its application for varsity status. On four occasions, in 1979, 1983, 1986 and 1988, the team had applied for varsity status and each time its application was rejected. The lower court found Colgate to be in violation of Title IX and ordered the university to upgrade women's hockey to a varsity sport.

The lower court began its analysis by comparing the women's club ice hockey team to the men's varsity ice hockey team to determine whether program components were equal. The court said there was no need to compare the overall men's and women's programs because Colgate had historically spent far less on women's sports than on men's sports. Although Colgate sponsored the same number of sports for each gender, the court found that this was not sufficient to satisfy Title IX because the budget for men's varsity sports ($380,861) was greater than that for women's varsity sports ($218,970). The court appeared to be of the opinion that it was proper to compare individual teams because the overall programs were not in compliance. The court also found it appropriate to compare a varsity team to a club team because Colgate could otherwise prevent an analysis of teams simply by keeping the women's team at club level.

Using the analysis for Title VII employment discrimination claims,[12] the court concluded that the plaintiffs had shown that the institution had discriminated against the plaintiffs in violation of Title IX through unequal treatment in expenditures, equipment, locker room facilities, travel, practice times and coaching. Having found discrimination, the court examined the six justifications advanced by Colgate for the unequal treatment: (1) the inability to field a team; (2) the absence of an NCAA championship; (3) the lack of other varsity teams against which to compete; (4) the lack of student interest; (5) the lack of talent; and (6) the financial burden. The OCR Title IX policy interpretation provides that institutions are not required to upgrade teams to varsity status if there is not a reasonable expectation that intercollegiate competition in the sport will be available within the institution's normal competitive regions. The January 1996 OCR clarification notes that an institution may be required actively to encourage the development of intercollegiate competition for a sport for members of the underrepresented gender when overall athletics opportunities within its competitive region have been historically limited for members of that sex.

Of these six reasons, the last — financial burden — was the real reason the applications for varsity status were denied. The court acknowledged the financial burden of elevating a sport to the varsity level, but emphasized that it was not a legitimate reason. "Equal athletic treatment is not a luxury. It is not a luxury to grant equivalent benefits and opportunities to women . . . . Equality and justice are . . . essential elements now codified under Title IX." Colgate's other justifications were found to be pretextual: (1) a sufficient number of women's ice hockey players were present in the northeast to field a team; (2) the playing of an NCAA championship was not a prerequisite to fielding other varsity sports; (3) 16 other varsity ice hockey teams in the region provided sufficient competition; (4) student interest in women's ice hockey had grown at Colgate and would continue to increase if the team were elevated to varsity status; and (5) the club team was fairly competitive and would improve greatly if given the benefits of being a varsity sport. The court therefore found Colgate to be in violation of Title IX and ordered Colgate to elevate women's ice hockey to the varsity level.[13]

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[11] This result highlights a potential problem for plaintiffs instituting Title IX actions: the time it takes a case to progress through the courts can render their individual claims moot. That is why many of the successful actions have been brought by plaintiffs representing all current and future women who would seek to play the particular sport at the institution. In fact, as a result of the appellate court decision, female athletes at Colgate filed a class action suit asking the court to order Colgate to upgrade women's ice hockey from club to varsity status.

[12] See the discussion in footnote 32 comparing the Title VII analysis to the Title IX analysis.

[13] Another framework for analyzing the claim is whether the plaintiffs' athletics interests and abilities were effectively accommodated with the different levels of competition—varsity versus club level.

Accommodation of Athletics Interests and Abilities

The regulation adopted to implement Title IX requires institutions to provide "equal athletics opportunity for members of both sexes" and to consider whether the selection of sports and levels of competition effectively accommodate the interests and abilities of both sexes. The three-part test to measure compliance with this particular requirement, which is found in the OCR policy interpretation and has been widely followed by the courts, provides that an institution may comply either: (1) by providing participation opportunities for men and women students that are "substantially proportionate" to their respective enrollments;[14] or (2) where members of one sex are underrepresented, by showing a history and continuing practice of program expansion which is demonstrably responsive to the developing interests and abilities of the members of that sex; or (3) where members of one sex are underrepresented and the institution cannot show a continuing practice of program expansion, by demonstrating that the present program "fully and effectively" accommodates the interests and abilities of the members of that sex. Satisfaction of any one of these tests constitutes compliance with Title IX. It is in defining the meaning of these requirements that the most significant developments in Title IX litigation have occurred over the past four years.

Decisions to Eliminate, or Not to Upgrade or to Add, Women's Teams

Although the law in this area is evolving and the cases are fact-specific, certain principles are fairly clear. If, as is often the case, men's and women's participation in intercollegiate athletics is not proportionate to enrollment, an institution will be vulnerable to claims that it is in violation of Title IX. In that situation, if the institution is seeking to eliminate a women's sport or has turned down requests to upgrade a women's team, it probably will be unable to show that it is fully and effectively accommodating the interests of its female student-athletes. If it is planning to eliminate a women's team, it is likely to make it more difficult to establish a history of continuing expansion of opportunities for women. In its 1996 clarification, OCR stated that an institution that eliminates some participation opportunities for the underrepresented gender still can meet prong two (history of expansion) if, overall, it can demonstrate a history and continuing practice of program expansion.

If participation is not proportionate to enrollment and an institution is considering requests to upgrade a women's club team or to sponsor a women's varsity team, the institution needs to consider its actions carefully. If it cannot establish an ongoing history of expansion of opportunities for women, it will need to have justifiable reasons for denying the request. Expense alone will not be an acceptable justification.

Although there are no bright lines to define when participation is substantially proportional to enrollment, the cases provide some guidance. The courts, for example, have determined that differences of 10 percent between participation in athletics and undergraduate enrollment are not substantially proportional. Some settlements, which represent only the agreement of the parties, have been based on differences of three percent.

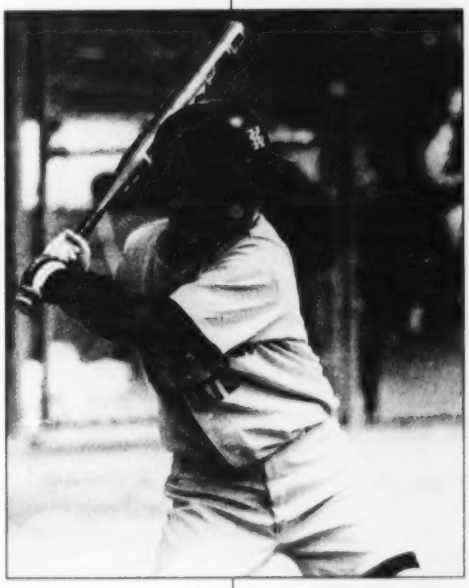
The January 1996 OCR clarification provides further guidance regarding proportionality and suggests that proportionality will be fairly strictly construed, although minor imbalances may still meet the proportionality test under certain circumstances. Specifically, OCR states that if the difference between enrollment and participation is one percentage point in year two, but the ratios were precisely proportional in year one, the institution still would satisfy the proportionality test, because "it would be unreasonable to expect the institution to fine tune its program in response to this unexpected change in enrollment." In another example, OCR states that an institution that has had a consistent enrollment rate for five years would be in compliance if, after expanding its athletics program for women in order to reach proportionality, the enrollment rate for women increases by two percentage points in the year in which the institution achieves a participation rate that would have matched the five-year enrollment percentage.

The reasoning underlying these examples is that proportionality means precisely that, and

[14] For purposes of this text, football ordinarily increases the number of participation opportunities available to men and therefore also is likely to increase the number of opportunities that must be offered to women to accommodate their athletics interests and abilities.

that variations of one to two percentage points still may result in meeting the proportionality test if the institution can demonstrate that (1) its enrollment and participation rates were equal before, or (2) it has been expanding opportunities and the ratio would have been proportional, but for the minor change in enrollment. The clarification does not address whether imbalances of one or two percentage points would support a finding of proportionality, absent these additional facts. It suggests that imbalances of greater than one or two percentage points would not meet the proportionality test.

Court Decisions. In the first appellate court opinion to interpret the substantive requirements of effectively accommodating the interests and abilities of members of both sexes, the U.S. Court of Appeals for the First Circuit ruled in Cohen v. Brown University[15] that Brown's action in downgrading two of its women's teams from varsity status was inconsistent with its obligation to accommodate fully the interests and abilities of its female student-athletes. In the spring of 1991, Brown announced that, for financial reasons, it planned to eliminate four varsity sports — women's volleyball and gymnastics and men's golf and water polo — although the teams could continue to compete as intercollegiate clubs. The actions did not materially affect the 63 percent/37 percent male/female athletics participation opportunity ratio. Brown's student body was approximately 52 percent male and 48 percent female.



Members of the two women's teams filed a class action suit against the university, and a Federal trial court determined that they had shown a likelihood of demonstrating at trial that Brown had failed to accommodate effectively the interests and abilities of its female students. The trial court therefore issued a preliminary injunction requiring Brown to restore the two women's teams to their former status as varsity teams, and prohibiting Brown from eliminating or reducing in status, or reducing the level of university funding for, any existing women's intercollegiate varsity team until the case was resolved. This order is only interim in nature and, now that plaintiffs have prevailed at trial, the court may grant a different remedy when it issues a decision regarding the remedy.

On appeal, the appellate court affirmed the lower court's decision. Brown did not meet the first test of the OCR policy interpretation, the substantially proportionate standard, because the 11-percent gap between the participation opportunities for male and female students and their respective enrollments precluded a finding of substantial proportionality. The court characterized this factor as a "safe harbor" — an institution that seeks to avoid engaging in extensive compliance analysis can simply satisfy the "substantially proportionate" test. Nor did Brown satisfy the second test, which requires continual expansion of athletics opportunities in an ongoing effort to meet the needs of the underrepresented gender, and persistence in this approach as interest and ability levels increase. Brown claimed that the lower court had not accorded it sufficient credit for its dramatic expansion of women's sports in the 1970s. Although the appellate court applauded Brown's prior efforts to expand women's sports, it concluded that the 12-year hiatus in program expansion alone showed that Brown had not engaged in continued expansion of women's sports.

On the critical third point, Brown contended that the mandate of equal athletics opportunity would be satisfied as long as it equally, though incompletely, accommodated the interests of its male and female student-athletes, i.e., that it accommodated their interests to the same degree. Brown took the position that, to the

[15] 991 F.2d 888 (1st Cir. 1993).

extent students' interests in athletics are disproportionate by gender, colleges should be able to meet those interests incompletely, as long as they are doing so in direct proportion to comparative levels of interest. The court rejected this position, stating that "Brown reads the 'full' out of the duty to accommodate 'fully and effectively.' " Full and effective accommodation means that an institution must fully and effectively accommodate the interests of women, even if men's interests are not fully accommodated, unless it can satisfy one of the first two factors (substantial proportionality or a continuing history of expansion). Moreover, the court cautioned that an institution "must remain vigilant," upgrading competitive opportunities for women as developing abilities require. An institution does not need to invest greater resources in athletics; rather, it may "bring itself into compliance with the first benchmark of the accommodation test by subtraction and downgrading, that is, by reducing opportunities for the overrepresented gender while keeping opportunities stable for the underrepresented gender (or reducing them to a much lesser extent)."

Following trial, the U.S. District Court for the District of Rhode Island ruled in late March 1995 that Brown University's intercollegiate athletics program fails to accommodate the interests and abilities of female students and violates Title IX.[16] The court gave Brown 120 days (until late July 1995) to develop a comprehensive plan for complying with Title IX, although it later shortened the time to require submission of the plan by early July 1995.[17]

The district court's most recent opinion in Brown provides important guidance concerning how courts will measure "participation opportunities." The court found NCAA squad lists to be the most accurate representation of varsity participants available, because they identify the names of individual athletes, thereby permitting verification of team participation numbers. Brown argued that there is no consistent measure of actual participation rates, because team size varies throughout the athletics season, due to factors such as injuries, cuts and quits. The court stated that counting participants at the end of the last complete season addresses this concern. It counted injured participants, but it did not include student-athletes who quit or were cut from the team, except where the change occurred very late in the season.

The court held that the "participation opportunities" offered by an institution are to be measured by counting the actual participants on intercollegiate teams. Brown argued that "opportunities" should be measured by counting each team's "unfilled but available" slots and offered a series of alternative means of measuring the available but unfilled slots, each of which the court rejected.

- Brown proposed that unfilled participation opportunities should include those additional athletics slots that the women's teams could support, given current resources. The court stated that these theoretical opportunities are not actually available to athletics hopefuls.[18]
- Brown asserted that unfilled participation opportunities could be measured by peak participation numbers achieved during some year in the past. The court disagreed, stating that numbers from the current or most recent complete competitive season provide the most representative quantification of participation opportunities presently offered.
- Alternatively, Brown argued that each women's team affords at least as many participation opportunities as its "matching" men's team. The court stated that men's and

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[16] 879 F. Supp. 185 (D.R.I. 1995), appeal docketed, No. 95-1417 (1st Cir. Apr. 27, 1995), appeal dismissed (1st Cir. July 19, 1995) (district court judgment not final). The parties settled the student-athletes' allegations of significant disparities in the relative financial support and benefits given to men's and women's university-funded varsity teams. In light of the settlement, the court's opinion focuses primarily on plaintiffs' claim that significant disparities exist in the number of intercollegiate participation opportunities available to men and women, and the question whether Brown effectively accommodates the athletics interests and abilities of its male and female students.

[17] The plaintiffs objected to the aspects of the order (a) giving Brown 120 days in which to file its plan and (b) staying the effectiveness of that requirement pending appeal, and asked that Brown be required to submit the plan within 21 days. On May 4, 1995, the district court issued a further order giving Brown 60 days from the date of the order in which to submit a plan and lifting the stay of that requirement. Plaintiffs appealed the court's second order and the appeals court dismissed the appeal as premature.

[18] OCR took the same position in its January 1996 clarification, stating that OCR must count only actual athletes, not unfilled slots, because "participation opportunities must be real, not illusory."

women's teams of the same name are sufficiently distinct from one another to invalidate this approach.

Brown also contended that a participation opportunity should be defined as a chance for an interested person to participate, and that where the student body is comprised of equal numbers of men and women, equality means offering the chance to participate in athletics to an equal number of men and women. Brown argued that the relevant comparison is between the interested potential varsity athlete pool and the composition of its athletics program, rather than between student enrollment, which may include uninterested and unathletic persons, and the athletics program. Under this theory, an institution would be deemed to provide equal participation opportunities if the ratio of men to women varsity athletes is substantially proportionate to the ratio of men to women among students interested in participating in varsity athletics. The possible survey populations or "pools" to determine relative interest in varsity athletics range from enrolled students, to all applicants for admission, to all academically able potential varsity participants. The court rejected this approach after reviewing each possible pool, concluding that Title IX establishes a legal presumption that discrimination exists if the university does not provide participation opportunities to men and women in substantial proportionality to their respective student enrollments, unless the university meets one of the two other tests for demonstrating effective accommodation of student interests and abilities. Aside from the conceptual problems inherent in attempting to measure "interest," the court expressed concern that this proposed approach would be unwieldy and would not account for the extent to which opportunities drive interests.

The court also discussed the meaning of the term "substantially proportionate." It stated that substantial proportionality is properly found only where the institution's intercollegiate athletics program "mirrors the student enrollment as closely as possible. This definition takes into account any small variations that are beyond the institution's ability to control or predict." The court rejected Brown's argument that "substantially proportionate" must be interpreted very liberally in favor of the institution, so that a sudden surge in numbers on one team does not throw a complying institution into violation. Brown emphasized that the gender composition of the athletics program is unpredictable and out of the institution's control. The court found minimal fluctuations in the gender balance in Brown's athletics program from year to year. Moreover, the court concluded that Brown "predetermines" the approximate number of athletics participants and the gender balance of its athletics program through the selection of sports it offers, the size of the teams it maintains, the quality and number of coaches it hires, and the recruiting and admissions practices it implements. The court stated that Brown should not have been surprised by the gender mix of interested athletes on campus, because recruits constitute the great majority of athletes on nearly all of Brown's university-funded varsity teams.

In reviewing whether Brown satisfied the third prong of the compliance test (full and effective accommodation), the court rejected Brown's argument that "it may accommodate less than all of the interested and able women if, on a proportionate basis, it accommodates less than all of the interested and able men."

Brown appealed the district court's decision, but the appeals court dismissed the appeal as premature, until the district court rules on a remedy.

In Roberts v. Colorado State Bd. of Agriculture,[19] the U.S. Court of Appeals for the Tenth Circuit — interpreting the accommodation of interests and abilities requirement — found that Colorado State University's elimination of its women's softball team violated Title IX and affirmed a lower court order requiring Colorado State to reinstate the team to varsity status. The case was filed by former members of the Colorado State women's varsity softball team after the university announced it was discontinuing that sport (18 participants) and men's baseball (55 participants). After trial, the lower court found that Colorado State had violated Title IX by failing to accommodate effectively the interests and abilities of its women

[19] 998 F.2d 824 (10th Cir. 1993), cert. denied, 114 S. Ct. 580 (1993).

students and ordered reinstatement of the women's softball team. As in Brown University, the court applied the tripartite test contained in the OCR policy interpretation for assessing effective accommodation of student interests and abilities.

On appeal, the court found that the 10.5-percent disparity between female undergraduate enrollment (48.2 percent) and athletics participation (37.7 percent) of female students did not constitute substantial proportionality, the first prong of the three-part OCR test. It noted in passing that "[t]he fact that many or even most other educational institutions have a greater imbalance than CSU does not require a different holding." In support, the court cited the example in the OCR Title IX Investigator's Manual, which illustrates substantial proportionality by using undergraduate enrollment and athletics participation figures that are exactly the same.

As to the second part of the test, Colorado State argued that the lower court should have given greater weight to its dramatic expansion of women's athletics opportunities during the 1970s. Although the university had established 11 sports for women in the 1970s, the court found that participation opportunities for women had declined steadily during the 1980s and that budget cuts during the preceding 12 years had affected women (34-percent decrease) more than men (20-percent decrease). The court also found that an institution cannot show a history of expanding opportunities for women by making cuts in both the men's and women's sports programs, even if it results in a greater percentage of athletes being women. "Financially strapped institutions may still comply with Title IX by cutting athletics programs such that men's and women's athletics participation rates become substantially proportionate to their representation in the undergraduate population."

As to the third part of the test, Colorado State claimed that it was only obligated to accommodate its women athletes to the extent it accommodated its men athletes. Because both women's softball and men's baseball were eliminated and there were more disappointed male than female athletes, the university said it had met its Title IX obligation. The court of appeals rejected this argument, citing the language of the court in Brown University: "This benchmark sets a high standard: it demands not merely some accommodation, but full and effective accommodation."

Colorado State petitioned the United States Supreme Court for review of the Tenth Circuit decision. It asked the Supreme Court to decide whether Title IX proscribes only intentional gender-based discrimination, or whether it requires that the gender composition of a university's athletics programs mirror that of its student body. Colorado State also asked the Supreme Court to decide whether the Tenth Circuit had exceeded its authority to remedy a violation of Title IX by ordering it immediately and permanently to reinstate a specific athletics program, rather than permitting the university to determine what athletics programs should be continued to eliminate the statistical imbalance. The Supreme Court declined to review the case.

The U.S. District Court for the Western District of Pennsylvania undertook a similar analysis in Favia v. Indiana University of Pennsylvania.[20] Faced with budget constraints, Indiana University of Pennsylvania [Indiana (Pennsylvania)] eliminated the women's gymnastics and field hockey teams and the men's soccer and tennis teams. Before the cutback, 55 percent of the students were female but only 37 percent of student-athletes were female. After the elimination of the two women's teams, the percentage of female student-athletes dropped to 36 percent. Members of the two women's teams and the field hockey coach filed a class action suit against the institution, alleging that Indiana (Pennsylvania) had violated Title IX.

As to substantial proportionality, the court concluded that the 19-percent difference between the percentage of female students and the percentage of female student-athletes did not constitute substantial proportionality. As to the school's history of expanding opportunities for women, the court found that the progress made in the 1980s had been negated by recent cutbacks. The court also concluded that the school's promise to elevate women's soccer

[20] 812 F. Supp. 578 (W.D. Pa. 1993).

from club to varsity status in the future did not change the analysis. Finally, as to full and effective accommodation, the court found that the school's efforts were lacking. Honoring the scholarships of the athletes whose sports had been eliminated and aiding them in transferring to other institutions did not fully and effectively accommodate their interests.

The court found the school's defenses, similar to those raised in Colgate, to be unavailing. Financial concerns did not justify the school's actions, and the lack of an NCAA Division III championship in women's gymnastics made no difference. Further, the teams had quality competition, and would probably improve if given the advantages offered to men's teams. On this basis, the court granted the plaintiffs' request to reinstate the two sports pending the outcome of the trial.

Although Indiana (Pennsylvania) did not appeal this decision, it later asked the court to modify the order to allow it to replace the women's gymnastics team with a women's soccer team. The court denied the request, and Indiana (Pennsylvania) appealed to the U.S. Court of Appeals for the Third Circuit. In deciding whether the lower court's order should be altered, the Third Circuit commented on the application of Title IX to the case.[21] It noted that replacing the women's gymnastics program with a women's soccer program would help alleviate the Title IX violation by creating more participation opportunities for women and by raising the percentage of female athletes from 39 percent to 43 percent. Moreover, since a soccer team costs approximately $100,000 less per year to maintain than a gymnastics team, funds would be freed for other women's athletics programs. Nevertheless, the Third Circuit refused to amend the lower court's order, focusing on the fact that the gymnastics program was at the center of the underlying litigation. It also noted that expenditures for women's sports would decline and that the number of female athletes would still be disproportionate to the number of female students.

One court has taken a very different approach to the issue of proportionality. In Pederson v. Louisiana State University,[22] the United States District Court for the Middle District of Louisiana rejected the conclusion of other courts that numerical proportionality alone demonstrates compliance with Title IX. The court reasoned that the proportionality test assumes that interest and ability to participate in sports is equal as between all men and women on all campuses. The court found no evidence to prove or disprove this assumption and commented that "it seems much more logical that interest in participation and levels of ability to participate as percentages of the male and female populations will vary from campus to campus and region to region and will change with time. To assume, and thereby mandate, an unsupported and static determination of interest and ability as the cornerstone of the analysis can lead to unjust results."

In the court's view, the concept of a safe harbor, while simple, is flawed because it neither requires nor allows institutions to tailor their athletics programs to accommodate the specific interests and abilities of their students. Instead of examining proportionality first, the court said that it would examine whether LSU's policies were discriminatory, whether substantial and unjustified disparities existed within the program as a whole between opportunities afforded male and female students, or whether substantial disparities existed in individual segments between opportunities afforded male and female students. The court was hampered in its inquiry into the pivotal question of effective accommodation, because it found no evidence in the record showing that LSU knew what the interests and abilities of its female students were. Without that knowledge, neither LSU nor the court could evaluate whether LSU was effectively accommodating those interests and abilities.

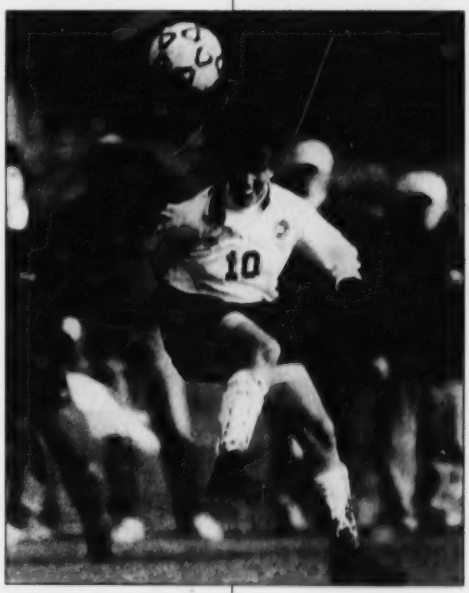
The court articulated a nonexclusive list of six means by which an institution could gauge student interests and abilities:

a. requests by students that a sport be added;
b. requests that an existing sport be elevated;
c. participation levels in club or intramural sports;

[21] 7 F.3d 332 (3d Cir. 1993).
[22] 912 F. Supp. 892 (M.D. La. 1996).

d. interviews with students, incoming students, coaches, administrators, or others regarding interest in a particular sport;
e. results of questionnaires of students and incoming students regarding interest in particular sports; and
f. participation levels in interscholastic sports by incoming students.

In addition, the court suggested that information could be obtained through discussions with amateur athletic associations or community sports leagues or through inclusion of a participation and interest question on the admissions form to the university.[23]



The plaintiffs in the consolidated actions against LSU sought to compel LSU to offer intercollegiate varsity soccer in the fall of 1994 and varsity fast-pitch softball in the fall of 1995.[24] LSU had added women's fast-pitch softball in 1979, but had dropped it in 1982-83. In 1993, LSU decided to add women's fast-pitch softball and soccer in 1995, although implementation was delayed in accordance with a Southeastern Conference agreement, which called for competitive conference play in soccer in the fall of 1995, with softball beginning in the fall of 1996 with competitive conference play starting in the spring of 1997.

Because the court had no basis to determine whether LSU's athletics program was accommodating the actual student interests and abilities, it looked to proportionality data as a proxy for hard data. Women represented approximately 49 percent of the student body and 29 percent of the athletes at LSU. The court noted that interest and participation in fast-pitch softball had increased nationally, regionally, locally, and within the Louisiana high schools that served as primary feeders for LSU. The evidence also showed that varsity fast-pitch softball teams had increased in number on the intercollegiate level since 1979, and that plaintiffs had the interest and substantial ability to play the sport. The court concluded that LSU was not accommodating plaintiffs' interests and abilities. That finding, along with the large disproportionality between LSU's male and female athlete populations in comparison with the general student body, suggested that discriminatory factors accounted for the discrepancies.

The court rejected LSU's arguments that it had demonstrated a history and pattern of expanding women's sports (part two of the three-part test) through its decisions to add women's soccer and fast-pitch softball. The court found that LSU had not lived up to its verbal commitment because softball was not yet in competition and the court was not convinced that it would be in competition by 1996, and because the women's soccer team was operating under handicaps that the court found demonstrated LSU's inadequate commitment to the team.

Significantly, the court found that LSU's decisions to add the two sports were not made to encourage women's athletics, but to follow decisions made by the Southeastern Conference. The court concluded that LSU was not accommodating the interests and abilities of its female student-athletes, and was in violation of Title IX.

Pederson also is notable for its decision on the issue of intent. As noted at the outset of this chapter, the Supreme Court ruled in 1992 that monetary damages are available to plaintiffs under Title IX for intentional discrimination. The question is what conduct constitutes intentional discrimination. The Pederson court set

[23] The court's suggestions regarding assessment methods track those used by OCR to determine interest among members of the underrepresented gender. Those methods are listed in the January 1996 OCR clarification.

[24] The plaintiffs seeking establishment of a varsity soccer team were found not to have standing to assert that claim, in part because they did not demonstrate that they had the requisite skill to play soccer at the intercollegiate varsity level.

an extremely high standard in this regard: despite scathing criticism of LSU, the court concluded that the violations were not intentional, although it characterized that conclusion as a very close question.

The court found that the violations "are a result of arrogant ignorance, confusion regarding practical requirements of the law, and a remarkably outdated view of women and athletics which created the byproduct of resistance to change." But the court stopped short of finding intentional discrimination, stating that LSU was saved from that conclusion by the fact that Title IX law and regulations had been confused and unclear. The court reviewed its findings that LSU "moved forward following its conference, with no cohesive plan, but through a progression of starts, stops, and stalls." LSU failed to investigate or test its assumptions regarding its female students and continued to segregate its men's athletics program from its women's athletics program. Ultimately, the court denied an award of damages, finding that LSU was "negligent in not adapting to the changing social and athletics landscape. However, LSU's actions are the byproduct of arrogant ignorance, the adherence to outdated attitudes and assumptions, and the confusion surrounding Title IX and its true intent, rather than the result of intentional discrimination."

The Pederson decision represents a very different approach from that taken by other courts and the Pederson rejection of proportionality as a safe harbor — an automatic means of establishing compliance — provides promise for plaintiffs and defendants alike. From a plaintiff's perspective, achieving proportionality alone will not insulate an institution from Title IX scrutiny, because the Pederson court rejects the notion that proportionality is a safe harbor through which Title IX compliance may be demonstrated. On the other hand, from a defendant's viewpoint, the decision reaffirms the reasoning of the three-part test that an institution may be found to be accommodating student interests and abilities even if the number of participants is not proportional to its enrollment.

An appeal of a final judgment is anticipated.

Settlements. Beyond these reported decisions, settlements in other cases provide additional guidance as to the type of corrective action that an institution may be required to take to avoid Title IX litigation. For instance, in Sanders v. University of Texas at Austin,[25] female students at Texas filed a Title IX class action suit alleging that the university had failed to accommodate fully and effectively the interests and abilities of female students and seeking the addition of four women's varsity sports. In settling the lawsuit, the university agreed to raise women's participation in varsity athletics from 23 percent to 44 percent, or within three percentage points of the 47-percent rate of female undergraduate enrollment, within three years. To achieve this goal, the institution planned to add a women's varsity soccer team in the 1993-94 academic year and a women's varsity softball team in 1995-96. It also agreed that, after a phase-in period of five years, scholarships to women would increase from 32 percent to 42 percent.

In Schuck v. Cornell University,[26] the parties settled a Title IX lawsuit when Cornell agreed to restore the women's gymnastics and fencing teams. Cornell had terminated the women's and men's gymnastics and fencing teams and freshman football in February 1992. Under the settlement agreement, Cornell agreed not to take action that would adversely affect other women's teams, but it reserved the right to make appropriate programmatic changes in its intercollegiate athletics program within the bounds of the law.

In Kiechel v. Auburn University,[27] female students at Auburn instituted a class action suit seeking to elevate women's soccer from club level to varsity status. To settle the suit, Auburn agreed to institute women's soccer as a varsity sport and to take the following additional actions with regard to the soccer program: commit $400,000 to the women's varsity soccer team for operating expenses during the 1993-94 and 1994-95 academic years; construct permanent practice and game fields for use by the start of the 1994 season; phase in scholarships at a predetermined rate; and pay the plaintiffs

[25] Civil No. A-92-CA-405 (W.D. Tex. Oct. 24, 1993).

[26] Civil No. 93-CV-756 FJS-GJD (N.D.N.Y. Dec. 8, 1993).

[27] Civil No. 93-V-474-E (M.D. Ala. July 19, 1993).

$60,000 in damages and $80,000 in attorneys' fees and expenses.[28]

Challenges to Decisions to Eliminate Men's Teams

Several institutions have eliminated teams of the overrepresented gender, usually male, while keeping constant the number of teams of the underrepresented gender. These actions have resulted in suits by male athletes charging that institutions have failed to accommodate their interests and abilities when cutting sports. In the first decision addressing alleged gender bias against men, the U.S. Court of Appeals for the Seventh Circuit ruled in Kelley v. Board of Trustees of the University of Illinois[29] that the University of Illinois, Champaign, did not violate Title IX when it eliminated only the men's swimming team and not the women's swimming team.

In May 1993, Illinois announced that it was eliminating varsity programs in men's swimming and fencing and men's and women's diving. The women's swimming team was not dropped. Budget constraints were cited as the primary reason for the decision, along with compliance with both Title IX and the gender-equity policy of the Big Ten Conference. Members of the Illinois men's swimming team challenged the decision to eliminate their team, claiming that the university had discriminated against them on the basis of sex.

Using the same test from the OCR policy interpretation employed by the courts in Brown University, Colorado State and Indiana University of Pennsylvania, the lower court concluded that Illinois could cut men's programs without violating Title IX because men's interests and abilities are presumptively met when substantial proportionality exists. At Illinois, men's participation in athletics (76.6 percent) was more than substantially proportional to their enrollment (56 percent). Conversely, the court noted that women's sports programs could not be cut, because women's participation in athletics already was disproportionate to their enrollment.

The court of appeals agreed. It characterized the university's decision to retain women's swimming as "extremely prudent" and a reasonable response to the requirements of Title IX. The court rejected the plaintiffs' argument that the substantial proportionality test establishes a gender-based quota system that is contrary to the nondiscrimination mandate of Title IX. It stated that the Department of Education policy interpretation merely creates a presumption that an institution is in compliance with Title IX when it achieves such a statistical balance. Because Title IX does not require that all teams be coeducational, the court said that institutions must be provided some means of establishing that, despite offering single-sex teams, they have provided equal athletics opportunities for both sexes. Rather than requiring parallel teams, the Department of Education measures compliance by analyzing how an institution has allocated its various athletics resources, which gives institutions flexibility to meet the athletics interests of their students.

In a second decision addressing claims by male athletes, Gonyo v. Drake University,[30] a group of male wrestlers sought an injunction requiring Drake to reinstate the men's wrestling program after the institution had decided to discontinue the program. The wrestlers contended that dropping the program constituted gender discrimination in violation of Title IX and that Drake was not effectively accommodating its male athletes' interests and abilities. The court rejected this argument finding that, although males were a minority of the student body, three-fourths of the participants in athletics were male and nearly three-fourths of the nonscholarship athletics budget was allocated to men's sports. There were seven men's varsity teams and only five women's varsity teams. Under these circumstances, Drake's elimination

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[28] In January 1994, female students at Virginia Polytechnic Institute and State University (Virginia Tech) filed a Federal class action lawsuit alleging that Virginia Tech is violating Title IX by denying varsity status to women's field hockey, women's softball, women's lacrosse and women's rowing. In 1991-92, women constituted 41 percent of the Virginia Tech student body, but only 21 percent of its varsity athletes.

A 1995 settlement between Virginia Tech and the plaintiffs provides that Virginia Tech will provide participation opportunities for women that are within three percent of female undergraduate enrollment by 1996-97, and women's scholarships that are within five percent of female undergraduate enrollment by 1997-98, and pay plaintiffs $50,000 to cover all costs, damages, and attorneys' fees. Virginia Tech agreed to carry out existing plans to add a women's softball team in 1995-96; it added a women's lacrosse team in 1994-95.

[29] 35 F.3d 265 (7th Cir. 1994), cert. denied, 115 S. Ct. 938 (1995), aff'g 832 F. Supp. 237 (C.D. Ill. 1993).

[30] 837 F. Supp. 989 (S.D. Iowa 1993).

of a men's team did not violate Title IX. Moreover, the relief sought by the wrestlers, reinstatement of the program, was inappropriate since it would result in even more athletics opportunities being offered to men when they already had a disproportionate number of participation opportunities.

In May 1994, a California state court in Kurth v. University of California Regents[11] refused to issue a preliminary injunction requiring the University of California, Los Angeles, to reinstate its men's swimming and men's gymnastics programs pending a trial on the merits of the plaintiffs' case. The court found that a university is permitted to eliminate proportional overrepresentation of male student-athletes to achieve the goal of proportional equality. The plaintiffs have appealed the decision. UCLA had previously announced that it also was cutting women's gymnastics, but reinstated the sport after female student-athletes threatened to challenge such action as a violation of Title IX.

Part II: Issues Related to Title IX

In many of the recent cases, the courts have addressed procedural and other issues relating to Title IX enforcement that go beyond the substantive requirements of Title IX. The procedural issues include the burden of proving violations of Title IX and the appropriate relief for proven violations. In addition, Title IX litigation often involves related, but separate, Federal and state law claims in actions brought by student-athletes and by coaches. The decisions in these cases are becoming important in understanding the requirements and implications of Title IX in the area of intercollegiate athletics.

Burden of Proof

Although the courts have regularly applied the three-part OCR test to assess the equality of athletics opportunities offered to male and female student-athletes, they have differed on the allocation of the burden of proof. In Brown University, the court of appeals found that the lower court had erred in requiring Brown to show that it had fully and effectively accommodated the interests and abilities of its women athletes. The court stated that the burden rests on the plaintiffs to prove a shortfall in the full and effective accommodation of interested female student-athletes by showing both numerical disparity and unmet interest. Despite the lower court's error, however, the appellate court found that the record was sufficiently developed to find unmet interest. The court noted that full and effective accommodation of athletics interests can be a complicated issue where plaintiffs seek to have the university create a new team or upgrade the status of a club team. In this case, however, where the plaintiffs were protesting elimination of an otherwise healthy varsity team, the court found little question as to unmet interest and ability.

The Colorado State court reached the same result. In looking at the accommodation of interests and abilities, the court of appeals concluded that the lower court had improperly placed the burden of proof on Colorado State to demonstrate that its athletics program fully and effectively accommodated the interests and abilities of women student-athletes. The appellate court found that it is the plaintiffs who must show that this standard has not been met, as an institution would be hard-pressed to establish the full and effective accommodation of the interests and abilities of its women athletes in the abstract. As in Brown University, despite this procedural deficiency, the appeals court found that there was sufficient evidence in the record that Colorado State had not accommodated the interests of its female student-athletes. The court agreed with the Brown University court that this issue is less complicated when plaintiffs seek reinstatement of an established team, rather than creation of a new one.

The court in Favia v. Indiana University of Pennsylvania reached a contrary result. There, in a case decided before Brown University and Colorado State, the court found that the defendant bears the burden of proving that the interests and abilities of the underrepresented sex have been fully and effectively accommodated. It agreed, however, with the other courts that the defendant bears the burden of showing a history and continuing practice of program expansion and that the plaintiff bears the burden of showing that participation is not substan-

[11] Civil No. SC 029577 (Cal. Sup. Ct. May 17, 1994).

tially proportional to enrollment.[12]

Appropriate Relief

Until challenged, an institution has the flexibility to decide how it will comply with Title IX. If a court is asked to redress an alleged violation of Title IX, the institution — as a practical matter — will have far less flexibility. If a court grants preliminary relief, as the courts did in Indiana (Pennsylvania) and Brown, a university will be required to comply with the preliminary order for as long as several years, until a trial on the merits is held or the case is settled. After trial, a university or college will be required to comply with the relief ordered until the court's order is set aside on appeal or the court modifies its order because of changed circumstances.

Colorado State contains the most extensive analysis of the kind of relief that is appropriate for Title IX violations. In that case, the court ordered reinstatement of the women's softball team after trial. The relief in that case therefore differs from that ordered in Brown University, where reinstatement of the two women's teams was expressly interim in nature, to be revisited after trial. In addition, in Colorado State, three weeks after the reinstatement order was issued, the lower court ordered the university to hire a coach, recruit new members for the team, and organize a fall season. On appeal, Colorado State argued that the order prescribing the precise manner in which it must comply with Title IX was an abuse of the lower court's discretion and amounted to micromanagement of its softball program.

The appellate court's responses to these arguments bear close analysis. Because the case was brought as an individual action, the court found that the order requiring reinstatement of the team was appropriate, because the relief ordered responded directly to the harm the plaintiffs had sustained. The court acknowledged, however, that Colorado State's argument might have some merit if the case had been a class action, and that a more appropriate remedy for a Title IX violation might be to enjoin the university from conducting men's varsity competition until it presented a plan to bring itself into compliance with Title IX.

The court also rejected Colorado State's contention that the order required it to maintain a softball team in perpetuity. Because the relief was directed at plaintiffs in their individual capacities, the court said once all the plaintiffs had transferred or graduated, Colorado State could return to court and seek to have the injunction dissolved. The court noted that this was precisely the course taken by another court in the Colgate case, where the appellate court had vacated the order granting varsity status to the women's ice hockey team because all the plaintiffs would have graduated before the order took effect. Colorado State also might be entitled to have the injunction vacated if it were to remedy its Title IX violation in another manner, such as by meeting the substantial proportionality benchmark.

In one respect, the appeals court agreed with Colorado State. It ruled that although the lower court had the power to ensure that the reinstated softball program had all the incidental benefits of varsity status, the lower court went too far in requiring the softball team to play a fall 1993 exhibition season. The court of appeals said Colorado State was under no obligation to create a top-flight team or to make certain that the team had a good season; Colorado State simply was required to reinstate the softball program with all the incidental benefits of varsity status. Colorado State requested that the United States Supreme Court review the relief ordered by the court, but the Supreme Court declined to review the case.

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[12] Another issue in this area is the applicability of Title VII employment discrimination analysis in the Title IX context. Without much discussion, and upon the urging of the parties, the lower court in Colgate University explicitly adopted the analysis used in Title VII employment discrimination cases. Thus, the plaintiffs had the burden of showing an initial case of discrimination: that the athletics department was subject to Title IX; that the plaintiffs were entitled to protection of Title IX; and that the university had not provided "equal athletics opportunities." Only the last requirement was at issue in Colgate. Once the burden had been met, Colgate had the burden of demonstrating that its decision was based on legitimate, nondiscriminatory reasons. Once such reasons were established, the plaintiffs were required to show that they were, in fact, actually a pretext for discriminatory actions.

In Brown University, however, the appeals court rejected Brown's suggestion that the analytical model used in Title VII employment discrimination cases should be applied to Title IX cases. The court found it unnecessary to utilize the Title VII analysis when the statute, regulation and policy interpretation clearly delineate Title IX's standards. Further, the court believed that differences in the scope and purpose of Title IX made the Title VII analysis inappropriate. Title IX only applies to institutions receiving Federal funds but, if applicable, touches all aspects of the institutions. In contrast, Title VII applies to virtually all employers, but only to employment-related matters. Moreover, Title IX is largely "aspirational" in that institutions may choose how to satisfy its requirements, whereas Title VII prescribes specific standards of conduct. Thus, the court found the Title VII analysis inapplicable to the Title IX context.

In contrast to the Colorado State court, the Pederson court declined to order specific injunctive relief requiring LSU to institute specific sports. As in Colorado State, the Pederson decision was issued following trial. Although the Pederson court found LSU to be in violation of Title IX, it ruled that "Title IX does not require specific intercollegiate sports be added or specific intercollegiate sports be reduced ...." The court stated that the relief sought — an injunction requiring initiation of fast-pitch softball (the soccer plaintiffs were found not to have standing; see footnote 24) — was not appropriate in light of the court's findings. Instead, the court ordered LSU to comply with Title IX and to submit an adequate plan for that compliance, thus giving the university the flexibility to fashion its own solution to the inequality of athletics opportunity.

It is important to recognize that Pederson involved a different factual situation from Brown University and Colorado State. In the latter two cases, the plaintiffs sought to stop the institution from cutting an existing sport. In Pederson, the plaintiffs sought institution of two sports, both of which LSU was planning to add, but at a later time. Notwithstanding the different factual backgrounds, the Pederson decision is notable in that the court did not grant the specific relief the plaintiffs sought — the addition of the fast-pitch softball team — even though the court found LSU to be in violation of Title IX.

Other Claims Brought by Title IX Plaintiffs

There have been other legal claims that have been brought by plaintiffs who have filed lawsuits based on Title IX. They include equal protection claims and state law claims.

Equal Protection Claims

The Fourteenth Amendment to the U.S. Constitution provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws."[13] Plaintiffs in most Title IX cases claim violations of the equal protection clause in their complaints.[14] Although brought frequently, equal protection claims are rarely separately addressed by the courts in Title IX cases. Three decisions that have addressed equal protection arguments in some detail are Haffer v. Temple University, Cohen v. Brown University, and Kelley v. Board of Trustees of the University of Illinois.

The lower court in Kelley dismissed an equal protection claim brought by male swimmers challenging the Board of Trustees' decision to drop men's swimming. To violate the equal protection clause, the court found, the government entity must intentionally classify similarly situated individuals for different treatment on the basis of an impermissible characteristic, such as gender. The court said gender classifications that serve important governmental objectives, such as remedying past discrimination against women, and are substantially related to achievement of those objectives do not violate the equal protection clause. Clearly, the university classified men for different treatment than women on the basis of gender. The action, however, was taken in compliance with Title IX, which is intended to remedy gender discrimination against the underrepresented sex. The court therefore found that Title IX served a remedial purpose that qualifies as an important state interest, and that the institution's conduct was substantially related to eliminating discrimination against women in intercollegiate athletics at Illinois. On appeal, the U.S. Court of Appeals for the Seventh Circuit reached the same conclusion and rejected the plaintiffs' claim that the university's decision to eliminate only the men's swimming program and to retain the women's program denied them equal protection of law.

The 1987 opinion of the U.S. District Court for the Eastern District of Pennsylvania in Haffer v. Temple University[15] discusses the framework for analyzing equal protection claims. Female students had brought a class action suit against Temple, alleging that the treatment of female

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[13] U.S. Const. amend. XIV. By its language, the fourteenth amendment applies only to acts by the state. Thus, the court in Gonyo v. Drake University, 837 F. Supp. 989 (S.D. Iowa 1993), dismissed an equal protection claim on the grounds that Drake, a private university, was not a government actor. The so-called "state action" analysis, however, is extremely complicated and beyond the scope of this summary.

[14] For example, plaintiffs in Brown University, Cook v. Colgate University, Favia v. Indiana University of Pennsylvania, Kelley v. Board of Trustees of the University of Illinois, Gonyo v. Drake University, Haffer v. Temple University, Sanders v. University of Texas at Austin, and Kiechel v. Auburn University all included equal protection claims in their suits.

[15] 678 F. Supp. 517 (E.D. Pa. 1987).

athletes violated Title IX and the equal protection clause. The court found that, in order to prove an equal protection violation, plaintiffs must demonstrate not only that they have been adversely affected by the university, but that the impact upon them resulted from an invidious intent to discriminate. The court assumed, for purposes of its analysis, that Temple explicitly classified athletics programs on the basis of gender. For that reason, the court was required to determine whether Temple offered equivalent athletics programs to men and women. Because the facts were disputed on issues such as the allocation of opportunities to compete, expenditures, recruiting, coaching, travel and per diem, uniforms, equipment, supplies, training facilities and services, housing and dining facilities, academic tutoring and publicity, a trial on these issues was necessary (the case settled before a trial was held on the merits). The court, however, suggested that discrimination in these areas could be sufficient to establish an equal protection violation.

Conversely, the equal protection clause was raised as a defense in Cohen v. Brown University. Brown argued unsuccessfully that if the court read literally the full and effective accommodation requirement as written in the regulation, it would violate the equal protection clause. The court stated that even accepting that the requirement created a gender classification slanted somewhat in favor of women, the regulation would not violate the equal protection clause because Congress has broad power to remedy past discrimination against women. In a related argument, Brown asserted that the lower court's preliminary injunction ordering it to restore the two women's teams constituted affirmative action and violated the equal protection clause because the court lacked the necessary factual support to warrant such a step. In the absence of a legislative mandate to the contrary, however, the appeals court stated that the lower court had the power to grant any appropriate relief under the Federal statute.

State Law Claims

Although not advanced as often as equal protection claims, various state law claims are at times asserted by Title IX plaintiffs. Some state laws require equal treatment, not simply equitable treatment, for the underrepresented sex, which can make it easier for plaintiffs to succeed in their suits. In California National Organization for Women v. Board of Trustees of the California State University,[16] the claim that the California State University system was discriminating against women students in the conduct of intercollegiate athletics was based entirely on state statutory and constitutional grounds.

Under a consent decree agreed to by the parties, the California State University system agreed to provide, by the 1998-99 academic year, participation opportunities and athletics financial aid to men and women in percentages that are within five percentage points of their respective undergraduate enrollment percentages. By that same time, each California State University campus is to provide funding for women's sports in a ratio that is within 10 percentage points of the percentage of women undergraduates. General fund monies are included for purposes of this calculation, and allowances may be made for the differences in the cost of various athletics programs, such as football. Finally, the system also agreed to survey on a biennial basis the student body on each campus and prospective students from California to determine their interest in participating in intercollegiate athletics.

Similarly, the claims in Blair v. Washington State University[17] were based on state anti-discrimination statutes and state constitutional equal rights provisions. The trial court in that case found the inferior treatment of the women's athletics program in funding, fundraising efforts, publicity, scholarships, facilities, equipment, coaching, uniforms, and administrative staff and support resulted in discriminatory treatment of women that violated the state law against discrimination and the state Equal Rights Amendment. It ordered the university to take specific actions to remedy the discrimination. On appeal, the Supreme Court of Washington found that the trial court had erred in excluding football from its calculations for participation opportunities, scholarships and funding. On another issue, the state Supreme Court ruled that state law permitted the trial court's funding plan, which excluded sports-generated

[16] Civil No. 949207 (Cal. Sup. Ct. Oct. 15, 1993).

[17] 740 P.2d 1379 (Wash. 1987).

revenues from the calculations of university financial support.

In contrast, in Gonyo v. Drake University, the plaintiffs brought an unsuccessful breach of contract claim based on representations made by Drake to the wrestlers whose program was eliminated.

Gender Discrimination Suits by Women's Coaches

The number of gender discrimination suits brought by coaches of women's sports has grown markedly in recent years. The cases usually involve two types of claims. The first type, based on Title IX, the Federal Equal Pay Act (which requires equal pay for positions that require equal skill, effort and responsibility and are performed under similar working conditions), Title VII (prohibiting discrimination in employment on the basis of sex and other grounds), and a variety of state laws, involve claims that coaches of women's teams should be paid the same amount as coaches of men's teams. These suits have met with varying degrees of success, as courts have allowed disparities in salaries if there are qualitative differences in the coaches' responsibilities, experience or ability to raise funds. The second type, primarily based on Title VII, involves claims that a coach was terminated in retaliation for raising concerns about an institution's compliance with Title IX.

Court Decisions

In Stanley v. University of Southern California,[38] the U.S. Court of Appeals for the Ninth Circuit rejected Marianne Stanley's claim that the lower court had improperly denied her request to be reinstated as head women's basketball coach until after a trial on her claim could be held. Stanley had contended that she was entitled to receive the same compensation as that provided to the men's basketball coach because the head coaching positions of the men's and women's basketball teams required equal skill, effort, and responsibility, and were performed under similar working conditions. She alleged violations of the Equal Pay Act, Title IX, and various state laws. Although the court of appeals emphasized that a trial on the merits had not been held, it found a qualitative difference in responsibilities that justified a different level of pay. It stated that revenue generation is an important factor that may be considered in justifying greater pay, and that the relative amount of revenue generated should be considered in determining whether responsibilities and working conditions are substantially equal. The court also reviewed the men's coach's substantially different qualifications and experience and said that an employer may consider the marketplace value of an individual's skills in determining compensation.

This decision came in the context of Stanley's request for preliminary injunctive relief, before a trial on her various claims. Thereafter, following extensive discovery, the lower court granted the university's motion for summary judgment on all of Stanley's claims.[39] It found that Stanley had not shown that the head women's and men's basketball coaches performed substantially the same jobs or possessed the same skills, and thereby had not demonstrated a violation of the Equal Pay Act or Title IX. In reaching this conclusion, the court found that the head men's coach was under more pressure than Stanley to generate revenue, that he, in fact, generated more money than Stanley, and that he was contractually obligated to make more public appearances than Stanley. The court found that there was a quantitative dissimilarity in the respective responsibilities of the two coaches, and that the men's coach had substantially different and superior qualifications and experience. The court ruled that Stanley had not shown that the university discriminated on the basis of sex, and that the differences in fan support, revenue and pressures associated with coaching the men's and women's teams were not due to discriminatory acts by the university. The court further noted that the athletics director, who had been named as a defendant in his individual capacity, was not an employer for purposes of individual liability under Title IX or California state law. Similarly, the court found that Stanley had not proved her claim that the university retaliated against her, in part because her employment

[38] 13 F.3d 1313 (9th Cir. 1994).

[39] No. CV 93-4708, 1995 U.S. Dist. LEXIS 5026 (C.D. Cal. Mar. 8, 1995), appeal docketed, No. 95-55466 (9th Cir. Mar. 12, 1995).

contract had expired during her negotiations with the university and she had not agreed to the proposed terms that would have formed the basis of a new contract.

Stanley has appealed this decision.

Similarly, in Pitts v. Oklahoma State University,[40] the women's golf coach at Oklahoma State filed suit against the institution alleging violations of Title VII, Title IX and the Equal Pay Act based on the difference between her $40,704 salary and the men's coach's $66,000 salary. She succeeded on some of her discrimination claims. A jury in a Federal trial court awarded Pitts $36,000 in damages ($30,000 in compensatory damages and $6,000 for mental and emotional distress) after finding that the university had discriminated against her on the basis of sex. Since there was no written decision, it is difficult to determine the exact basis for the award. The jury, however, held against Pitts on her Equal Pay Act claim and found that she was not entitled to the same pay as the men's coach. The higher salary was based not on discriminatory reasons, but on the accomplishments of the golf teams, differing levels of fund-raising, and the marketability of the coach. In 10 years with the institution, the men's coach had won six national championships, had raised more than $8,000,000 and had led efforts to build a golf course. During the same span, Pitts had won 11 conference championships, but not any national championships, and had raised $15,000.

In Deli v. University of Minnesota,[41] the former women's gymnastics coach at the University of Minnesota, Twin Cities, claimed that the institution had discriminated against her by paying her a lower salary than that paid to the coaches of the men's football, basketball and ice hockey teams. She alleged violations of Title VII, the Equal Pay Act and Title IX. Relying on Stanley in dismissing the action, the U.S. District Court for the District of Minnesota found that the Equal Pay Act had not been violated. The coaches in the three men's sports supervised more employees and had greater responsibility for media and public relations. Further, the men's teams were larger, drew larger crowds and generated greater revenue than the women's gymnastics team. As to the Title IX claim, the court found that she could not recover since she had not shown that the athletes had received lesser quality coaching as a result of her lower salary.

In Tyler v. Howard University,[42] a District of Columbia Superior Court jury awarded $2,452,000 (reduced by the judge to $1,114,000) and legal fees to Howard's women's basketball coach, who alleged that the university had discriminated against her in violation of Title IX, the Equal Pay Act and state law provisions. Among other things, Tyler alleged that she was paid half of what her male counterpart was paid, had less support staff and had been given unequal facilities. Unfortunately, the court did not issue a written decision. The judge's revised award, however, includes the following amounts:

$600,000	lost wages award (three different grounds — sex discrimination under the D.C. Human Rights Act, sex discrimination under Title IX, and retaliation under the D.C. Human Rights Act);
$138,000	liquidated damages under the Equal Pay Act;
$72,000	emotional distress under the sex discrimination claim; and
$250,000	emotional distress under the retaliation claim.

In addition to the $1,060,000 judgment against Howard, a separate judgment in the amount of $54,000 was entered against an individual defendant for defamation.

Howard filed a motion to set aside the jury verdict or for a new trial. The trial court found merit in some of Howard's arguments and reduced the jury award for the second time, from $1.06 million to $250,000, concluding that the jury verdict was excessive. In its September 15, 1995, decision,[43] the court stated that Tyler had not established a violation of the Equal Pay

[40] Civil No. 93-1341-A (W.D. Okla. Apr. 21, 1994).
[41] 863 F. Supp. 958 (D. Minn. 1994).
[42] Civil No. 91-CA11239 (D.C. Sup. Ct. June 24, 1993).
[43] Civil No. 91-CA11239 (D.C. Sup. Ct. Sept. 15, 1995).

Act. It found that the head coach of the men's team had substantially more experience, skill, and knowledge of basketball than did Tyler, and there was more pressure on the men's coach than on Tyler to generate revenue and to win. The court noted that there was a question whether societal factors, such as greater spectator interest in, and greater media coverage of, men's sports should be allowed to justify a disparity in the pay of men and women coaches. The court raised, but did not answer, the question whether colleges have an affirmative obligation to spend more resources on female athletics programs and activities to influence and increase spectator and media interest in female sports.

On Tyler's claim of sex discrimination under state law, the court noted that a plaintiff may still recover damages for sex discrimination, even when jobs are not substantially equal. The court refused to set aside the jury verdict on Tyler's claim that she was undercompensated as head coach. The court agreed with Howard, however, that Tyler had not shown that Howard had discriminated against her on the basis of sex in not selecting her as athletic director. The court found no evidence that Tyler's gender played any role in her nonselection and granted Howard's motion to set aside this portion of the verdict. As to damages, the court found the jury award for sex discrimination to be excessive. It ruled that Howard is entitled to a new trial on the issue of damages alone, unless Tyler accepts a reduction in the amount of damages to $250,000.

On the Title IX claim, the court cited authority that differential compensation of coaches violates Title IX only where that compensation denies male and female athletes coaching of equivalent quality, nature or availability. It found sufficient evidence to establish a violation of Title IX, stating that the jury could have concluded that the salary differential was a significant factor in female athletes not receiving the same quality and extent of coaching services as did the male basketball players. On the other issues, the court ruled that Howard's conduct toward Tyler after she complained of sex discrimination did not rise to the level of retaliation. It further determined that the judgment against the individual defendant for defamation ($54,000) was excessive, and granted the motion for a new trial, limited to the issue of damages, unless Tyler accepts a reduction in the amount of damages from $54,000 to $10,000. Finally, the court denied Tyler's request for attorneys' fees, although it noted that she could renew her request after a decision on an appeal by either party.

An appeal has not been docketed.

In two cases, coaches of women's teams have been successful in defending against university motions to dismiss their claims. In Paddio v. Board of Trustees for State Colleges & Universities,[44] the U.S. District Court for the Eastern District of Louisiana rejected Southeastern Lousiana University's argument that Title IX does not provide a direct remedy for employment discrimination, and denied the university's motion to dismiss the Title IX claims of the plaintiff, the former head volleyball and softball coach who was seeking compensatory damages for wrongful termination. And in Bowers v. Baylor University,[45] the former women's basketball coach at Baylor instituted a $4,000,000 suit, solely alleging Title IX violations, against the university. Although the court denied her request for a preliminary injunction reinstating her as coach pending trial, the suit survived a motion to dismiss filed by the university. The case later was settled.

Settlements

In addition to these court decisions, settlements of suits by coaches and female athletics administrators also provide insight into the types of university conduct that may spur legal action. One highly publicized case involved Jim Huffman, the former women's volleyball coach at California State University, Fullerton. Two days after a Superior Court judge ordered the institution to reinstate women's volleyball (which had been dropped along with men's gymnastics) in response to a Title IX suit, the institution terminated Huffman, the coach at the time. Huffman brought suit, asserting that the termination had been in retaliation for his support of the Title IX suit. In February 1994, a jury awarded him approximately $1,350,000 in

[44] 61 Fair Empl. Prac. Cas. (BNA) 86 (E.D. La.) aff'd, 12 F. 3d 207 (5th Cir. 1993), cert. denied, 114 S. Ct. 1838 (1994).

[45] 862 F. Supp. 142 (W.D. Tex. 1994).

damages ($1,000,000 in non-economic damages, $350,366 in projected financial losses and $4,500 in punitive damages from individual institution administrators), plus $300,000 in legal fees. The institution initially appealed the verdict, but settled in July 1994 for the full amount of the jury award, excluding the interest that had accrued.

In a similar retaliation claim, Rudy Suwara, the former women's volleyball coach at San Diego State University, filed suit claiming wrongful termination after he was fired by the institution. He had coached the team for 16 years, and had qualified for the NCAA tournament in nine of the previous 11 years. He claimed that his firing was due, in part, to his defense of a Title IX complaint filed by the parents of one of his players in 1989. As part of an April 1994 settlement, the university agreed to pay him a lump-sum amount of $300,000 and to purchase an annuity that will pay Suwara $510 per month for life.

In an action involving an athletics administrator, Mary Zimmerman, the former associate athletics director at San Jose State University, brought suit against the institution seeking $1,200,000 in damages, claiming that she had been fired for advocating gender equity. Although her primary claim was under Title VII, she also included Title IX and state law claims in her suit. In May 1994, the parties settled the case and the university agreed to pay her $328,000.

Conclusion

The issues and standards addressed by this summary will continue to evolve as additional cases are decided by the courts. In the meantime, the members of the intercollegiate athletics community should consider the lessons to be drawn from the cases decided and settled to date, and evaluate whether they are in compliance with the requirements of Title IX. If an institution is not in compliance, it needs to evaluate what it must do to bring itself into compliance with Title IX.

PART IV

Division I Athletics Certification

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Division I Athletics Certification Program

Introduction

Athletics certification was approved for Division I institutions at the 1993 NCAA Convention as a key part of the NCAA's reform agenda. The certification program is meant to ensure the NCAA's fundamental commitment to integrity in intercollegiate athletics. The program is structured to achieve its goal in several ways, one of which is by setting standards (called operating principles) for the operation of Division I athletics programs.

These operating principles cover four basic areas — governance and commitment to rules compliance, academic integrity, fiscal integrity, and commitment to equity. The operating principles appear in Bylaw 23 of the NCAA Manual. One operating principle in the commitment to equity area specifically addresses gender issues.

Clearly, Title IX and the gender issues operating principle of the athletics certification program are not the same. Although both relate in part to issues of gender equity, Title IX and the certification program are unique and different in both their expectations and process. Title IX legislation and its application is explained throughout much of the text of this guide. The intent of this section of the guide is to focus upon the athletics certification operating principle related to gender issues, as well as to outline the evolution of the NCAA Committee on Athletics Certification's work in this area.

Legislation and Key Elements

The "Gender Issues" operating principle in the section on Commitment to Equity consists of several parts, each of which is subject to review by peer-review teams and the Committee on Athletics Certification:

1. An institution shall demonstrate that in the area of intercollegiate athletics, it is committed to fair and equitable treatment of both men and women.

- an institution must demonstrate a commitment, primarily through having adequate information and a plan.
- "fair and equitable treatment" is an example of a subjective term. It must be defined and evaluated by the institution and the peer-review team visiting the campus.

2. It shall have available adequate information for assessing its current progress in this area;

- self-study Item No. 1 in the athletics certification self-study instrument provides a means for the institution to prepare this information.

3. And an institutional plan for addressing it in the future. The plan shall provide for accommodating the evolving standards of the Association in the area of gender equity.

- an explanation of the "institutional plan" expectations follows.
- an institution has the burden to keep abreast of NCAA legislation in the area of gender equity and to reflect that flexibility in its plan.

The Committee on Athletics Certification's deliberations, and its instructions to peer-review teams, reflect the committee's position that current circumstances (actions that already have been taken or that currently are underway) and future plans both offer evidence of the institution's commitment and that peer-review teams should consider both in evaluating conformity with these operating principles.

The committee has paid particular attention to the development of institutional plans because the committee believes that the plan is the most effective instrument by which to communicate clearly the institution's current commitment, and it constitutes an enduring record that helps to ensure continuation of that commitment in the future. For this reason, the committee has taken the position that a written institutional plan has significant value for every Division I institution, regardless of its ability to demon-

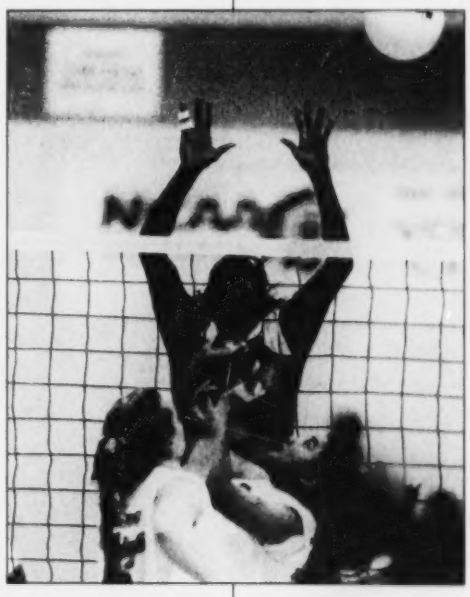
strate an institutional commitment through other means.

Basic Requirements of an Institutional Plan

As the Committee on Athletics Certification in February 1995 deliberated over the first institutions completing the program, it recognized that institutions needed assistance in understanding what constituted a plan. Using a "standard of reasonableness," the committee clarified that a plan must:

1. Be in writing — the plan shall be committed to paper, preferably in a single, comprehensive document.

2. Be developed through a process that reflects broad-based campus participation — the plan shall be developed with opportunities for significant input from appropriate constituent groups inside and outside of athletics.



Helpful Hint: Early in the process, institutions provided information related to gender issues from multiple campus documents such as task force reports, committee minutes, affirmative action policy documents and so forth. The committee has on several occasions requested that institutions incorporate all elements of its gender plan into a single document.

As with all "plans for improvement" in the certification program, the committee also reiterated that a gender-equity plan must include the following three elements:

1. Intended end results — the plan shall state solutions to address problems identified by the institution in its self-study.

2. Individuals or offices responsible for taking specific actions — the plan shall identify specific staff members or campus entities who will carry out the proposed solutions.

3. Specific timetable(s) for completing the work — the plan shall establish proposed deadlines by which the solutions should be in place.

Additional Clarifications

Even with these requirements specified, many schools continued to struggle with what was needed for a gender-equity plan, so the committee attempted to state them more simply:

A plan should reflect where the institution is currently, where the institution wants to be and how the institution intends to move from one status to the other. Institutions can address these elements by clearly specifying:

1. The issues confronting the institution that were identified during the self-study.

2. The goals the institution intends to achieve.

3. The steps the institution will take to achieve those goals.

Another Important Consideration

The committee's efforts to specify its minimum expectations were successful in prompting many institutions to produce acceptable plans. However, the committee began to notice that in some instances, it was not clear which campus entities within an institution's governance structure "signed off" on the plan.

The committee reacted to this by indicating that it was important for a gender-equity plan to receive:

Institutional approval — the plan shall be formally adopted by the institution's final authority in such matters to ensure that it carries the commitment and support of the entire institution.

Sample Plan Excerpt

The following was developed from several gender-equity plans that the Committee on Athletics Certification commended. It is included here to help illustrate the three major components of a plan.

Institution X

Issues in the Self-Study	Intended End Results	Individual(s)/Office(s) Responsible for Implementation	Specific Timetable(s)
Salaries of men's and women's coaches need to be more equitable.	Increase assistant women's volleyball coaches' salaries by 15 percent.	Athletics Director and Human Resources Office	1996-97
Senior Woman Administrator lacks substantial involvement in athletics administration.	Strengthen and clarify the role of the Senior Woman Administrator.	Athletics Director and Faculty Athletics Committee	1996-97
Scheduling of facilities needs to reflect equitable opportunities for "prime" times.	Adjust men's and women's basketball practice schedules to reflect equitable/equal practice gym time.	Athletics Director, Senior Woman Administrator, Faculty Athletics Representative and Head Athletic Trainer.	1997-98
The need for equitable access to training room staff for all student-athletes should be addressed.	Develop written procedures that equitably address the allocation of training room staff personnel to all sports.	Athletics Director, Senior Woman Administrator and Faculty Athletics Representative	1997-98
Scholarship and athletics opportunities for male/female student-athletes are not equitable.	• Provide two additional women's rowing scholarships.	Athletics Director and Vice-President for Finance	1996-97
	• Conduct an interest survey of prospective women students from feeder schools of the institution.	Faculty Athletics Committee and Affirmative Action Officer	1996-97
	• Based on interest survey from 1996-97, determine which women's sport(s) to add.	Athletics Board, Athletics Director and Senior Woman Administrator	1997-98

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	• Secure funding for additional women's sport.	Athletics Director, Senior Woman Administrator and Vice-President for Finance	1998-99
	• Hire head coach for new women's sport.	Athletics Director and Senior Woman Administrator	1999-2000
	• Begin competition in new women's sport.	Senior Woman Administrator	2000-01

Additional Information

Institutions may contact their NCAA staff liaison for athletics certification for more information regarding gender-equity plans. David A. Knopp, director of compliance services, who serves as staff liaison to the committee, also may be contacted for more information.

PART V

Promotion Ideas

PROMOTION IDEAS

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Promotional Ideas

Promotion and publicity help create a more equitable athletics environment on campus. The following successful promotional ideas have been provided by NCAA member institutions, conferences and the National Collegiate Association of Marketing Administrators.

Basketball

1. Title of Promotion:
"Let's Read With The Lady'Backs."

Institution:
University of Arkansas, Fayetteville.

Brief Summary of Promotion:
"Let's Read With The Lady'Backs" is a winter holiday break reading program structured for K-6 grades. Incentives are awarded for the following: (1) top reader in the school district; (2) top reader in each grade (district-wide); (3) top classroom for each grade (district-wide); (4) top reader for each school; and (5) top school overall (district-wide). The top school overall is awarded a plaque that rotates from school to school on a yearly basis. All participants receive two tickets to a Lady Razorback basketball game.

Budget:
Minimal—incentives can be traded out or donated by local vendors.

Results:
Percentage of tickets redeemed has been the highest redemption rate of all basketball promotions for a given year. This program takes more time than you might think, especially in working with the elementary schools, so allow plenty of start-up time and plenty of time for in-school visits. This program is a great way to work closely with elementary students.

For More Information:
University of Arkansas Women's Athletic Department.

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2. Title of Promotion:
"Paper Airplane Contest."

Institution:
California Polytechnic State University, San Luis Obispo.

Brief Summary of Promotion:
The game program contained a flyer that included instructions on how to make a paper airplane. At half time, a barrel was placed at half court and fans tried to fly their paper airplanes into the barrel from their seats. Those whose airplanes made it into the barrel (fans wrote their names and addresses on the airplane before folding it) received a certificate for a dinner for two at one of several local restaurants.

Budget:
Minimal. Local restaurants provided dinners.

Results:
A fun, successful event.

For More Information:
Cal Poly San Luis Obispo Department of Athletics.

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3. Title of Promotion:
"Nifty Fifty Night."

Institution:
Colorado State University.

Brief Summary of Promotion:
The University Advancement Office, in conjunction with the president's office, developed a list of 50 distinguished professional women in the area and invited them to a pregame reception, followed by a women's basketball game. This gave the women an opportunity to meet the coaching staff, see the game and network with each other in a recreational setting.

Budget:
Minimal.

Results:
Very good. The university plans to contin-

ue the program with other women's sports and include a postgame reception where student-athletes can be involved.

For More Information:
Colorado State Department of Athletics.

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4. Title of Promotion:
UConn Huskies "Shoot For A Ford" Contest.

Institution:
University of Connecticut.

Brief Summary of Promotion:
The contest will take place during television timeouts at 10 men's and 10 women's basketball games during each season. Two fans will be selected to participate in the promotion. One fan will be selected from registrants that are collected at designated Ford dealerships throughout the state of Connecticut; the other fan will be selected at each game through registration. The fan selected from registrants collected at Ford dealerships will be contacted before the designated game and be awarded two tickets to that game along with the opportunity to participate in the UConn Huskies "Shoot For A Ford" contest. During a timeout at the game, three fans will have the opportunity to make five foul shots within a 20-second time frame. Prizes will be awarded depending on the number of foul shots made. At the second to last game of the season there will be a qualifying round to determine one winner. Fans that make all five foul shots during the season would be invited back to have the opportunity to make one foul shot. All fans will shoot foul shots until they miss. The fan that makes all of his or her foul shots will earn the opportunity to shoot for a Ford automobile. He or she will be invited to come back to the last game to attempt a half-court shot. If the half-court shot is made, he or she would win an automobile courtesy of Ford. Prizes will be awarded to each contestant that has made a foul shot. Prizes will escalate in value as more foul shots are made. The contest will be promoted through news releases and air time provided by a local radio station.

Budget:
New England Ford Dealers, in association with WTIC AM 1080, cosponsor the contest. UConn will provide the cost of insurance, which would cover the half-court shots taken at the end of the season.

Results:
Contestants win. The fans have fun watching. We get the entertainment value and fan interaction.

For More Information:
University of Connecticut.

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5. Title of Promotion:
"Face-Up."

Institution:
Georgia Tech Athletic Association.

Brief Summary of Promotion:
All inner-city elementary schools will be invited to attend the match. A special picture for students to color will be mailed early in the month. Any student who colors in the picture will be admitted in for a discount. We will have a contest in different age groups based on the number of colored pictures we receive. Winners will be chosen and prizes awarded.

Budget:
Minimal; postage for mailing the pictures. Prizes will be covered by sponsors.

Results:
Increased attendance.

For More Information:
Georgia Tech Athletic Association.

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6. Title of Promotion:
"Break the Attendance Record."

Institution:
Georgia Tech Athletic Association.

Brief Summary of Promotion:

McDonald's, a corporate sponsor, will distribute tickets to area franchises. These tickets will be given to customers of McDonald's any time they purchase a particular item (e.g., a Value Meal).

Budget:

Costs covered by sponsor.

Results:

Increased attendance.

For More Information:

Georgia Tech Athletic Association.

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7. Title of Promotion:

"Berenato's Bunch Day," "Boys and Girls Club Day" and "Berenato's Camp Day."

Institution:

Georgia Tech Athletic Association.

Brief Summary of Promotion:

All members of Berenato's Bunch (women's basketball youth group) will be invited to the game as well as to an ice cream party with Coach Berenato before the game. Also, all the Atlanta area Boys and Girls Clubs will be invited to the game, with a special discount or free admission. Finally, all summer campers who wear their shirts from camp will be admitted into the game for a discount.

Budget:

Minimal.

Results:

Increased attendance.

For More Information:

Georgia Tech Athletic Association.

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8. Title of Promotion:

"Wendy's Coach for a Game."

Institution:

University of Iowa.

Brief Summary of Promotion:

Children under 10 were allowed to sign up at Wendy's to be coach for a game. Winners were drawn and given seats directly behind the Iowa bench. They also were given an autographed basketball, T-shirt and a tour of Carver-Hawkeye Arena.

Budget:

Minimal.

Results:

Strong.

For More Information:

Iowa Department of Athletics.

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9. Title of Promotion:

"Hoop Happenin' '93."

Institution:

University of Michigan.

Brief Summary of Promotion:

One game was chosen to be heavily promoted. A special logo was created for the event, which was held in conjunction with a planned Scout Day and Kids Go Blue Day (Michigan's kids fan club). Face-painting, clowns and balloon animals helped to create a festive atmosphere.

Budget:

Giveaways were provided by various corporations, and Marriott provided coupons for hot dogs and soda. The Ann Arbor News supplied the advertisements.

Success:

Excellent. Approximately 3,500 people attended the game (average before the game was 800), in spite of a winter storm warning.

For More Information:
Michigan Department of Athletics; Jody Humphries, Director of Marketing.

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10. Title of Promotion:
"Show Your Gopher Spirit."

Institution:
University of Minnesota, Twin Cities.

Brief Summary of Promotion:
Fans wearing maroon and gold to a selected Gopher basketball game were allowed admission for only $2 (regular price is $4.25). Also, the first 1,000 fans received insulated mugs paid for by media sponsors, and the local Pizza Hut sponsored $1 all-you-can-eat pizza at the game. The University of Minnesota Hospital provided heart health information and screenings to tie in with the Valentine's Day theme.

Budget:
Minimal. Sponsors absorbed virtually all costs.

Results:
Strong. Increased attendance for the game, which had its starting time moved from 2 p.m. to noon in order to accommodate live television coverage.

For More Information:
Minnesota Department of Athletics; Karen Smith, Assistant Athletics Director, External Operations.

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11. Title of Promotion:
"Mid-America Classic Computer Giveaway."

Institution:
University of Missouri, Columbia.

Brief Summary of Promotion:
Designed to enhance attendance at the Mid-America Classic women's basketball tournament, the promotion involved having children who attended a game write their name and school on a piece of paper and place it in a drop box as they went into the arena. The elementary school with the highest tournament attendance over the two days won a $1,000 gift certificate from a local computer store. Publicity involved direct mailings to elementary schools in Columbia and the surrounding area, and piggy-back advertising with Mid-America Classic ads.

Budget:
Minimal.

Results:
Very successful. The institution suggests beginning the promotion of the giveaway early, probably in the preseason. This allows schools and parents to get organized and attend the games in an effort to win the gift certificate. Another suggestion is to recruit other sponsors in order to offer second- and third-place prizes.

For More Information:
Missouri Department of Athletics.

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12. Title of Promotion:
"Cheer with the Ducks."

Institution:
University of Oregon.

Brief Summary of Promotion:
During a cheerleading clinic with the Oregon cheerleaders, children between the ages of 5-12 learn two cheers and a dance, then perform their new skills at half time of a women's game. Publicity is gained through public-address announcements, a community bulletin in the local newspaper, radio spots, flyers handed out at women's basketball games and word-of-mouth.

Budget:
Minimal.

Results:
The promotion increases attendance at a basketball game, enhances community involvement, provides positive role models for young children and increases awareness of women's athletics events at Oregon.

For More Information:
Oregon Department of Athletics; Director of Promotions.

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13. Title of Promotion:
"The Couch Potato Shoot-Out."

Institution:
Rice University.

Brief Summary of Promotion:
Contestants are drawn at random from a ticket stub number to participate. Each person selected lies down on a couch at the free-throw line at half time and attempts to hit two of three free throws from a prone position on the couch. All contestants receive free pizza coupons from local sponsors and winning entries get a chance in the final home game to win the couch itself.

Budget:
Costs covered by sponsors.

Results:
This contest added to the atmosphere of each home game with crowd involvement and the opportunity to bring added value to major sponsors in other sports.

For More Information:
Rice University.

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14. Title of Promotion:
"Toyota 3-on-3 for Literacy."

Institution:
University of Tennessee, Knoxville.

Brief Summary of Promotion:
A campus sorority sponsored a 3-on-3 basketball tournament with the Lady Vols and Toyota. Teams that entered paid a fee and donated one book per participant. The finals of a men's or a women's game was played at half time of a basketball game. Campus groups who brought a children's book to the game earned points for their organization. The group with the most points won a large TV and trophy.

Budget:
All costs were absorbed by the sponsor.

Results:
A great number of books were collected for area literacy centers and student attendance at the game was increased by approximately 500.

For More Information:
University of Tennessee Women's Athletics.

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15. Title of Promotion:
"Bring A Buddy."

Institution:
University of Tennessee, Knoxville.

Brief Summary of Promotion:
All season ticket holders receive a coupon to bring a guest to a selected basketball game at the beginning of the basketball season. Those "buddies" are then mailed season ticket information.

Budget:
Minimal.

Results:
The results are a positive feeling by current ticket holders, an increase of approximately 700 fans at the selected game and a percentage of new subscribers from those who used the coupons.

For More Information:
University of Tennessee Women's Athletics.

Softball

1. Title of Promotion:
Media Softball Game.

Institution:
California Polytechnic State University, San Luis Obispo.

Brief Summary of Promotion:
The athletics department arranged a softball game between local media and the varsity women's team. The program received substantial local media coverage, both before and after the event, and enjoyed enhanced attendance during the

regular season. In addition to press releases, mailings were sent to alumni and boosters and newspaper ads were placed in college and local media.

Budget:
Minimal. The sponsor of the event was Danco Athletics, an athletics apparel company.

Results:
Very successful.

For More Information:
Cal Poly San Luis Obispo Department of Athletics.

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2. Title of Promotion:
"Mothers Day With The Matadors."

Institution:
California State University, Northridge.

Brief Summary of Promotion:
The Los Angeles Daily News advertised for mothers and daughters to come and enjoy the game on Mothers Day. All mothers and daughters were admitted free to the contest on Mothers Day with the Daily News ad. The first 25 mother-daughter tandems in the gate received flowers from a local florist, a sponsor of the day. Recognition of all mothers and daughters in attendance were made via the public-address system. A drawing during the first game was held to select the mother-daughter duo that made the honorary first pitch during the second game of the double-header.

Budget:
Costs covered by media and flower sponsor.

Results:
Increased attendance and awareness of Cal State Northridge as a choice to watch and play softball.

For More Information:
Cal State Northridge Department of Athletics.

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3. Title of Promotion:
"Lucky Numbers."

Institution:
University of Minnesota, Twin Cities.

Brief Summary of Promotion:
"Lucky Numbers" is a one-page program insert, with a scorecard on one side and sponsor ads on the other (cost of program is 25 cents to fans). Three Lucky Numbers are drawn in each of the 2nd, 4th and 6th innings of both games of a double-header to coincide with the first three Gopher batters. Prizes vary, depending on the action of the batter. For example, if a player hits a home run in the second inning, Pizza Hut provides the Lucky Number winner with a free pizza party for four.

All Lucky Numbers are eligible to win Fan of the Game. This Lucky Number is drawn from a fishbowl at the end of the game and the winner receives a t-shirt, two mugger-huggers and coupons good for a case of a Pepsi product.

Budget:
Minimal. Sponsor ads pay for programs and prizes are provided by Pizza Hut, SuperAmerica, Steichen's Sporting Goods and Pepsi.

Results:
Strong.

For More Information:
Minnesota Department of Athletics; Karen Smith, Assistant Athletics Director, External Operations.

Volleyball

1. Title of Promotion:
"Chamber of Commerce Night with the Matadors."

Institution:
California State University, Northridge.

Brief Summary of Promotion:
All business persons with business cards are admitted free to the game and the public-address announcer welcomes businesses represented by reading the cards collected as fans enter the arena. During

the event, 10 business cards are drawn and those persons serve between games two and three of the match, trying to win prizes from restaurants and sponsors by placing the ball in different serve zones. The chamber member with the largest attendance receives a plaque and a reception/mixer at the athletics program conference center.

Budget:
Minimal. Advertisements in Los Angeles Daily News, promotional spots on KMGX radio and promotional releases to all area chambers of commerce.

Results:
Strong.

For More Information:
Cal State Northridge Department of Athletics.

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2. Title of Promotion:
"Student Group Day."

Institution:
East Tennessee State University.

Brief Summary of Promotion:
Student groups were challenged to attend a women's volleyball match, with the winning group determined by the number of those in attendance, the loudness of the group, and its spirit (i.e., signs, noisemakers, etc.). The prize was 25 pizzas donated by Dominos and several cases of Coca-Cola.

Budget:
Minimal.

Success:
Very good. Particularly popular with ROTC groups.

For More Information:
East Tennessee State Department of Athletics; Gary Friedman, Assistant Athletics Director.

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3. Title of Promotion:
"Hardee's Pre-Match Tent Party."

Institution:
Georgia Tech Athletic Association.

Brief Summary of Promotion:
"Hardee's Pre-Match Tent Party" will assist in efforts to target students, since school begins on this day. A tent will be set up with Hardee's food, and a DJ will play live music for the party. The match is televised.

Budget:
Covered by sponsor.

Results:
We always have had success with this promotion when done early in the quarter.

For More Information:
Georgia Tech Athletic Association.

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4. Title of Promotion:
"Power Bar Night—Residence Hall Night."

Institution:
Georgia Tech Athletic Association.

Brief Summary of Promotion:
To officially welcome students back, a Residence Hall Night Contest will be conducted in which the dormitory with the largest percentage of residents in attendance wins a pizza party. In addition, this night also will be Power Bar Night, where the first 500 fans receive a free Georgia Tech Volleyball/Power Bar t-shirt.

Budget:
Costs covered by sponsor.

Results:
Increased attendance.

For More Information:
Georgia Tech Athletic Association.

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5. Title of Promotion:
"Sony Frequent Fan Contest."

Institution:
Georgia Tech Athletic Association.

Brief Summary of Promotion:
During the first four home matches of the season, special cards will be distributed to fans. Each time a fan attends a game, he or she will present the card to an attendant, who will then stamp the card with a special stamp. If the fan attends eight of the 12 (67%) home matches for the season, then he or she will be eligible for a drawing for a product from Sony. This prize will be given away during the last home match of the season.

Budget:
Costs covered by sponsor.

Results:
More repeat attendance.

For More Information:
Georgia Tech Athletic Association.

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6. Title of Promotion:
"Pizza Hut 10,000 Serving Contest."

Institution:
Georgia Tech Athletic Association.

Brief Summary of Promotion:
Between games two and three of every home match, five fans will be chosen to participate in a serving contest. Pizza will be placed on the court for fans to win if they hit that target with their serve. The fifth fan chosen will be designated as the fan who will serve for the chance to win $10,000. Placed on the court is a target with a hole the size of a volleyball. If the fan serves through the hole, he or she wins $10,000.

Budget:
Costs covered by sponsor.

Results:
Contestants win. The fans have fun watching. We get the entertainment value and fan interaction.

For More Information:
Georgia Tech Athletic Association.

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7. Title of Promotion:
Mizuno "If The Shoe Fits, Win It" Contest.

Institution:
Georgia Tech Athletic Association.

Brief Summary of Promotion:
At each home match, two pairs of shoes are displayed for fans to sign up to see if those shoes fit their feet. Two contestants are drawn and brought to the court after Game 1 to try those shoes on in front of the crowd.

Budget:
Costs covered by sponsor.

Results:
Well received by fans.

For More Information:
Georgia Tech Athletic Association.

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8. Title of Promotion:
"Volleyball Atlanta Night."

Institution:
Georgia Tech Athletic Association.

Brief Summary of Promotion:
Members of Volleyball Atlanta, an area adult volleyball league with over 500 members, will be invited to attend the match as well as a postmatch reception at Jock's and Jill's. In addition, we will tie-in to the homecoming activities by inviting all area Atlanta Georgia Tech Clubs as well as area alumni to attend a pregame tailgate party.

Budget:
Costs covered by sponsor.

Results:
Increased attendance.

For More Information:
Georgia Tech Athletic Association.

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9. Title of Promotion:
"Family Night (cosponsored by IBM and WCCO Radio)."

Institution:
University of Minnesota, Twin Cities.

Brief Summary of Promotion:
Coupons were distributed through SuperAmerica stores, high schools, direct mailings and after a Gopher football game—approximately 90,000 in all. Coupons allowed everyone in a group or family to be admitted for only $1 per person, with only one coupon needed per group. Additionally, each coupon had a stub that was to be filled out with the bearer's name and address in order to be entered in a drawing for prizes provided by sponsors. These names were then added to the women's sports database for future promotions.

The first 500 youths (12 and under) received free trick-or-treat bags filled with candy, apples and pencils donated by sponsors. The promotion also provided an opportunity to invite sponsors to a match and a postmatch dessert reception.

Budget:
IBM provided money for expenses and WCCO Radio promoted the event.

Results:
Strong.

For More Information:
Minnesota Department of Athletics.

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10. Title of Promotion:
"Halloween Bash."

Institution:
University of Minnesota, Twin Cities.

Brief Summary of Promotion:
A DJ from a local radio station with the same first name as our new head volleyball coach was our guest at the match. The DJ promoted our match the week before on the air. Everyone with the same first name as the DJ and our coach got in for $1 off the regular admission ($5 Adult, $3 Youth). The first 2,000 fans received a cardboard mask with our coach's face. The DJ ran our contests and we did bobbing for apples, pin the tail on Goldy the Gopher, and other games. After the match, the kids went trick-or-treating to our players for candy and other prizes.

Budget:
Sponsor covers cost.

Results:
Contestants win. The fans have fun watching. We get the entertainment value and fan interaction and recognition for our new head coach.

For More Information:
University of Minnesota Women's Athletics.

All Women's Sports

1. Title of Promotion:
"A+ Arkansas."

Institution:
University of Arkansas, Fayetteville.

Brief Summary of Promotion:
"A+ Arkansas" is a multi-sport promotion that rewards Arkansas high school students and junior high students in northwest Arkansas for perfect grades and/or perfect attendance. School counselors and/or principals identify qualifying students and ticket vouchers are sent to the schools. Students may attend a selected soccer, volleyball, women's basketball or softball game.

Budget:
Minimal—largest expense is in postage.

Results:
Most students have chosen to attend

women's basketball. Most schools choose to make this an "all-school" event and bus the students to the games.

For More Information:
University of Arkansas Women's Athletic Department.

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2. Title of Promotion:
"Dash for Cash."

Institution:
University of Minnesota, Twin Cities.

Brief Summary of Promotion:
Sponsors donate $500 in various increments and coupons from their businesses. Three contestants' names are drawn to participate. The money and coupons are scattered over the court. The contestants are blindfolded and spun around five times. The contestants then have 30 seconds to crawl on the floor and collect as much money and coupons as possible.

Budget:
Sponsor covers costs.

Results:
Contestants win. The fans have fun watching. We get the entertainment value and fan interaction.

For More Information:
University of Minnesota Women's Athletics.

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3. Title of Promotion:
"Youth Booster Club."

Institution:
State University of New York at Buffalo.

Brief Summary of Promotion:
Membership is free for the first year and offered to any youngster. Applications are distributed to schools and area businesses, and members receive a club t-shirt and membership card when they attend their first event. A monthly club newsletter with articles written by women's volleyball student-athletes is sent, and members are able to participate in selected events as ball persons and back-up timers. They also are invited to attend women's athletics events free, and are given the opportunity to attend selected pregame coaches' talks and postgame play with the student-athletes. After the first year, membership is renewable for a nominal fee.

Budget:
Flexible, depending on cost of shirts, newsletter mailing, etc. Local business sponsorship can offset cost in exchange for ad space on shirt, newsletter, etc.

Results:
Very successful. Program has provided valuable interaction opportunities between young girls and collegiate female athletes. Feedback from parents was particularly positive and appreciative.

For More Information:
Buffalo Department of Athletics.

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4. Title of Promotion:
"Recycling Night."

Institution:
University of Tennessee, Knoxville.

Brief Summary of Promotion:
Fans who bring a newspaper to the game/match receive $1 off the admission price. The newspaper heavily promotes the event with advertising.

Budget:
No cost.

Results:
Average increase in attendance of 1,000.

For More Information:
University of Tennessee Women's Athletic Department.

Conference Promotions

1. Title of Promotion:
"Colonial Athletic Association & Girl Scouts of the USA 'BE YOUR BEST' Partnership."

Conference:
Colonial Athletic Association.

Brief Summary of Promotion:
The purpose of this program is to involve the Girl Scouts of the USA in all of the CAA women's athletics program in order to expose them to a variety of sports and to give them the opportunity to meet coaches and student-athletes who can serve as positive role models. Each institution will select a regular-season conference basketball game and promote it as "Girl Scout Appreciation Day" by: (1) advertising it via public service announcements during regular-season games at the host institution, (2) providing discounted or free admission for girls scouts, (3) recognizing the girl scouts or troops over the loudspeaker during the selected game or during half time, (4) arranging with campus cheerleaders to be available at a designated time before the game to meet with the girl scouts and show them some routines or similar activity, (5) designating a time for girl scouts to secure autographs from student-athletes either before or after the basketball game, and (6) permitting the girl scouts to pose for pictures with the student-athletes and school mascot. Each institution will provide discounted or free admission to all women's athletics competitions for scouts who are wearing their girl scout t-shirts or sweatshirts.

Budget:
Minimal.

Results:
Very strong.

For More Information:
Colonial Athletic Association.

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2. Title of Promotion:
"T.E.A.M. Program (Teachers Excited About Motivation)."

Conference:
Metro Atlantic Athletic Conference.

Brief Summary of Promotion:
A community relations program designed with the intent to motivate and encourage the scholastic achievement and athletics participation of various area grade school students. Students write letters to players, make banners, and encourage support of their adopted team during the regular season and MAAC basketball tournaments. Passes will be distributed to the students for the Saturday, March 1, 1997 session (men's quarterfinals and women's semifinals) at the Knickerbocker Arena, and a group rate will be made available to parents and others who may wish to attend with the students. MAAC coaches and players also have been encouraged to visit with the class that adopted them in conjunction with trips to the Albany area for regular season basketball games.

Budget:
Minimal.

Results:
Promotes an image of leadership by the MAAC and its institutions. Projects student-athletes and coaches as positive role models. Increases exposure of MAAC teams in the Albany community.

For More Information:
Metro Atlantic Athletic Conference.

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3. Title of Promotion:
"MAAC Gives Back."

Conference:
Metro Atlantic Athletic Conference.

Brief Summary of Promotion:
A voluntary community outreach with the intent of giving back to the Albany community by motivating and exciting children about MAAC basketball. The head coach, two student-athletes and mascot from each school will participate on Friday morning, March 1, 1997. This is an opportunity for coaches and players to provide inspiration through positive reinforcement. Participants will meet, greet and sign autographs, as well as distribute MAAC Tournament programs at area children's hospitals. Some participants will take part in a clinic at Knickerbocker

Arena, where students from the TEAM Program schools and other nonprofit organizations will be present.

Budget:
Minimal. Gifts are donated by corporate sponsors and coaches and student-athletes are asked to volunteer their time.

Results:
Increased awareness of the MAAC as a conference and the MAAC Basketball Tournament. Additionally, local media interest was highlighted by a front-page action photo from the Knick clinic.

For More Information:
Metro Atlantic Athletic Conference.

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4. Title of Promotion:
"Youth Education through Sports (YES) Girls Sports Clinics at Conference Championships."

Brief Summary of Promotion:
Conferences are funded to conduct a YES/GSC in conjunction with their conference championships. Clinics are structured to provide participants with hands-on sports skills instruction and life skills/educational instruction. Participants are girls, exclusively, between the ages of 10-18. Institutions enroll 75 to 300 participants for each clinic. Conference and host institutions provide appropriate facilities, coaches, student-athletes and/or other personnel (guest speakers) at no cost to the institutions. The administration of the clinic is a collaboration between the conference office and host institution. The objective of the program is to provide opportunities for sports participation for girls, particularly ethnic minorities and to encourage participation in nontraditional sports for girls.

Budget:
Costs covered by the NCAA.

Results:
Very successful.

For More Information:
NCAA Youth Programs.

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5. Title of Promotion:
"The SEC Women's Championship Program."

Conference:
Southeastern Conference.

Brief Summary of Promotion:
The following are the sponsorship elements that will be offered to prospective SEC Women's Championship Sponsors: (1) Promotional rights around the following women's and coed championships: basketball, tennis, golf, gymnastics, soccer, volleyball, softball, track and field, cross country and swimming and diving; (2) Promotional licensing rights for championship logos in advertising copy and promotional activities; (3) Right to be called "SEC Women's Championship Sponsor;" (4) Public Relations opportunities surrounding youth clinics, SEC Woman of the Year, and more at SEC Women's Championship events; (5) Signage at the women's championships; (6) Public-address announcements at the women's championships; (7) On-site opportunities (sampling, couponing, etc.) at women's championships; (8) Booth at the SEC FanFare; (9) TV spots on SEC Women's programming on SportSouth, Sunshine and Prime Networks; (10) Print ads in the SEC Basketball Preview, the SEC Basketball

Program and the SEC Tournament Championship shell; (11) Tickets and hospitality to women's championship events; (12) SEC corporate partners will still have promotional rights surrounding the women's events; and (13) The SEC Women's Championship sponsors will not be category competitors with current and prospective SEC corporate partners.

Budget:

As anticipated with any new project, we have budgeted conservatively. However, with the tremendous growth of women's sports marketing, we expect tremendous success for the future of this program.

Results:

The addition of a women's championship sponsor program will enhance the SEC's corporate partner program by placing value on the women's championships. With the addition of the women's championship program, there will be added emphasis on the women's events due to surrounding promotions and advertisements. In bringing focus and attention to the women's events, the current SEC corporate partners also are more likely to stand up and take notice of the great value of the championships, and in turn, become more involved in the promotion of the events.

For More Information:

Southeastern Conference.

PART VI

Emerging Sports

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Emerging Sports

Timeline

1991—NCAA surveys its member institutions' expenditures for women's and men's athletics programs. Study results show undergraduate enrollment is about even (50/50), but male students constitute about 70 percent of the participants in intercollegiate athletics, their programs receive about 70 percent of athletics scholarship funds, 77 percent of operating budgets and 83 percent of recruiting funds.

1992—In response to the 1991 survey results, the NCAA Gender-Equity Task Force is established.

1993—The final report of the Gender-Equity Task Force is published. The Task Force recommends institutional standards and NCAA regulations to help achieve gender equity. Nine "emerging" sports (five team and four individual sports) are identified.

***An emerging sport** is a sport recognized by the NCAA that is intended to provide additional athletics opportunities to female student-athletes.*

Institutions are allowed to use emerging sports to help meet the NCAA minimum sports-sponsorship requirements and also to meet the NCAA's minimum financial aid awards.

1994—The NCAA principle of gender equity is adopted at the NCAA Convention to create greater participation opportunities.

1994-95—Financial aid legislation and minimum contests and participants required for sports sponsorship applicable to emerging sports programs become effective.

Sport	Minimum Contests	Minimum Participants	Maximum Equivalency Limit (financial aid)
Ice Hockey	20	n/a	18
Rowing (crew)	6	n/a	20
Synchronized Swimming	8	n/a	5
Team Handball	10	n/a	12
Water Polo	10	n/a	8
Archery	8	5	5
Badminton	8	6	8
Bowling	8	5	8
Squash	8	9	9

1995-96—Amateurism legislation, seasons of competition legislation and awards and benefits legislation applicable to emerging sports programs become effective.

1996-97—Coaching limits and playing and practice legislation for emerging sports become effective.

1996-97 and thereafter—Institutions that sponsor an emerging sport must be in full compliance with all remaining NCAA legislation. *[Note: Per NCAA Bylaw 14.01.6.2, the initial, continuing and general eligibility legislation is only effective for student-athletes first entering the collegiate institution on or after August 1, 1996.]*

1996—A National Collegiate Championship for women's rowing is adopted at the NCAA Convention. Legislation to establish championships in emerging sports may be proposed during the second year in which 40 or more institutions sponsor the sport for two consecutive academic years.

The following subsections have been provided for colleges interested in adding an emerging sport or an existing women's sport:

- *Team Sports* and *Individual Sports* include information obtained from the national governing bodies regarding start-up costs, facilities, equipment needed and other general information about each sport.
- *Women's Varsity Sports* includes the number of varsity sports for women offered by NCAA Divisions I, II and III member institutions.
- *1995 High School Girls Athletics Participation* includes the number of high school teams offering the sport and the number of high school girls participating on those teams.

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Ice Hockey

Level of Participation (high school/college):
Approximately 12,000 females play ice hockey in the United States; at the collegiate level, 40 teams currently compete, 15 of which participate in the Eastern College Athletic Conference as Division I varsity teams, with the remainder operating as university club teams. Recently, the Minnesota State High School League sanctioned girls' ice hockey as a varsity sport.

Number of Student-Athletes Needed:
22, with 15 on the travel squad.

Estimated Start-up Costs:
A minimum of $9,000, assuming your institution already operates the sport on a club or intramural level. If the program is being started from scratch, costs will include uniforms and other equipment typical of new sports.

Equipment Needed:
Traditional ice hockey equipment.

Facilities Necessary:
Ice rink or ice time.

Number of Coaches Needed:
Two (head and assistant).

Annual Cost of Program (including approximate coaches' salaries):
Approximately $37,500 and up.

Funds/Grants Available:
Nominal start-up grants are available from USA Hockey.

Typical Season (dates, duration):
Winter-spring.

Key Organizations/Agencies:
USA Hockey
4965 North 30th Street
Colorado Springs, CO 80919
719/599-5500
David Ogrean, Executive Director

Remarks:
Women's ice hockey is a nonchecking sport which emphasizes passing, skating, shooting and playmaking.

Rowing (Crew)

Level of Participation (high school/college):
The United States Rowing Association estimates that approximately one million people row in the United States. Annually, more than 500 regattas are held with collegiate competition.

Collegiate competition involves boats in which rowers use one oar (known as sweep rowing). Approximately 250 colleges and universities have current competitive rowing programs.

Number of Student-Athletes Needed:
Competitions are held in eight- and four-person events. A typical varsity crew consists of 24 student-athletes, with 36 additional participants competing at the novice level.

Estimated Start-up Costs:
$78,000.

Equipment Needed:
Two new 8+ boats; two new 4+ boats; three sets of eight oars; eight rowing machines; and boat trailer.

Facilities Necessary:
Appropriate waterway.

Number of Coaches Needed:
Two.

Annual Cost of Program (including approximate coaches' salaries, exclusive of scholarships):
$162,500.

Funds/Grants Available:
None.

Typical Season (dates, duration):
Mid-March through mid-May.

Key Organizations/Agencies:
U.S. Rowing Association
Pan American Plaza, Suite 400
201 South Capitol Avenue
Indianapolis, IN 46225
317/237-5656 or
800/314-4ROW

Remarks:
The association is eager to assist colleges and universities interested in sponsoring women's rowing.

Synchronized Swimming

Level of Participation (high school/college):
Approximately 4,000 athletes compete in synchronized swimming nationally; currently, more than 30 institutions offer competitive synchronized swimming programs.

Number of Student-Athletes Needed:
12 (ideally, though only one is necessary).

Estimated Start-up Costs:
Approximately $3,000.

Equipment Needed:
Sound system, suits and warm-ups, and training equipment.

Facilities Necessary:
Swimming pool.

Number of Coaches Needed:
Two.

Annual Cost of Program (including approximate coaches' salaries):
Approximately $25,000-$30,000.

Funds/Grants Available:
Matching funds up to $2,500 available from Synchro Swimming USA, with a further possibility of up to four years of matching funding.

Typical Season (dates, duration):
March-April (training in fall).

Key Organizations/Agencies:
Synchro Swimming USA
Pan American Plaza
Suite 510
201 South Capitol Avenue
Indianapolis, IN 46225
317/237-5700
Nancy M. Wightman, President

Remarks:
Since 90 percent of all synchronized swimming participants attend college, recruitment opportunities appear plentiful.

Team Handball

Level of Participation (high school/college):
Currently, seven institutions offer team handball as a club sport, with others offering the program at the intramural level.

Number of Student-Athletes Needed:
12.

Estimated Start-up Costs:
Approximately $2,600.

Equipment Needed:
Goals (portable or permanent), balls, court tape.

Facilities Necessary:
Most gymnasiums are suitable for competition.

Number of Coaches Needed:
One.

Annual Cost of Program (including approximate coaches' salaries):
Approximately $20,000.

Funds/Grants Available:
None.

Typical Season (dates, duration):
Winter-spring.

Key Organizations/Agencies:
U.S. Team Handball Federation
One Olympic Plaza
Colorado Springs, CO 80909-5768
719/578-4582
Michael D. Cavanaugh, Executive Director

Remarks:
The federation is eager to provide professional assistance and support to institutions interested in introducing team handball as a varsity sport.

Water Polo

Level of Participation (high school/college):
Currently, 20 institutions offer varsity women's water polo teams.

Number of Student-Athletes Needed:
20.

Estimated Start-up Costs:
Minimal. Necessary equipment includes balls, nets and uniforms (swim suits). Studies of men's water polo programs suggest they are the most cost effective of all intercollegiate sports.

Equipment Needed:
Balls, nets, swimming equipment.

Facilities Necessary:
Swimming pool.

Number of Coaches Needed:
One.

Annual Cost of Program (including approximate coaches' salaries):
Approximately $15,000-$20,000.

Funds/Grants Available:
U.S. Water Polo, Inc., the sport's national governing body, will provide educational grants for clinics and seminars for coaches and players/or equipment grants up to $1,000.

Typical Season (dates, duration):
Spring.

Key Organizations/Agencies:
U.S. Water Polo, Inc.
Pan American Plaza
Suite 520
201 South Capitol Avenue
Indianapolis, IN 46225
317/237-5599
Bruce Wigo, Executive Director

Remarks:
It is anticipated that women's water polo will become an Olympic sport at the 2000 Olympics.

Individual Sports

Archery

Level of Participation (high school/college):
While no concrete levels of participation were available, it has been demonstrated that women's interest in archery has grown demonstrably over the past several years.

Estimated Start-up Costs:
Approximately $1,500.

Equipment Needed:
Bows, mats, stands, target faces and arrows.

Facilities Necessary:
Appropriate safe area for practice and competition. Examples include gymnasiums or athletics fields (shooting distances are 18 and 25 meters).

Number of Coaches Needed:
One.

Annual Cost of Program (including approximate coaches' salaries):
Approximately $12,000.

Funds/Grants Available:
The Archery Manufacturers & Merchants Organization will provide $1,000 in start-up funds for any NCAA member institution initiating either an archery club or team during 1994-95.

Typical Season (dates, duration):
Winter-spring.

Key Organizations/Agencies:
National Archery Association
One Olympic Plaza
Colorado Springs, CO 80909
719/578-4576
Christine McCartney, Executive Director

Remarks:
Bows are supplied by student-athlete, though colleges may need to buy a small quantity of equipment for beginners, available from manufacturers at discounts.

Badminton

Level of Participation (high school/college):
Fifty-four percent of those surveyed who play badminton are women; additionally, the highest percentage of players are 12-17 years old. Approximately 300,000 people play badminton weekly and 760,000 people list it as their favorite sport.

Estimated Start-up Costs:
Less than $1,000.

Equipment Needed:
Rackets, birdies, tape for gym floor, nets and standards.

Facilities Necessary:
Most gymnasium floors are sufficient for badminton.

Number of Coaches Needed:
One.

Annual Cost of Program (including approximate coaches' salaries):
Approximately $10,000-$15,000.

Funds/Grants Available:
None.

Typical Season (dates, duration):
Fall-spring.

Key Organizations/Agencies:
U.S. Badminton Association
One Olympic Plaza
Colorado Springs, CO 80909
719/578-4808

Remarks:
Research shows that an estimated 80 million people play or have played badminton.

Bowling

Level of Participation (high school/college):
Approximately 160 colleges and universities have intercollegiate bowling teams.

Estimated Start-up Costs:
Approximately $1,800.

Equipment Needed:
Bowling balls, uniforms.

Facilities Necessary:
Bowling alley.

Number of Coaches Needed:
One.

Annual Cost of Program (including approximate coaches' salaries):
-- Approximately $25,000.

Funds/Grants Available:
None.

Typical Season (dates, duration):
Winter-spring.

Key Organizations/Agencies:
Young American Bowling Alliance
5301 South 76th Street
Greendale, WI 53129-1192
414/423-3421

Remarks:
Approximately five million young people (junior high through high school) bowl regularly; approximately one-half of these bowlers are female.

Squash

Level of Participation (high school/college):
Thirty institutions field competitive women's squash teams, though approximately 238 colleges and universities have squash courts.

Estimated Start-up Costs:
Less than $2,000.

Equipment Needed:
Balls and uniforms (players provide eye guards, racquets and shoes).

Facilities Necessary:
Squash courts.

Number of Coaches Needed:
One.

Annual Cost of Program (including approximate coaches' salaries):
Approximately $15,000.

Funds/Grants Available:
The United States Squash Racquets Association offers help in obtaining equipment at little or no cost.

Typical Season (dates, duration):

November 1 through first weekend of March.

Key Organizations/Agencies:

U.S. Squash Racquets Association
P.O. Box 1216
Bala Cynwyd, PA 19004
610/667-4006
Craig W. Brand, Executive Director

Remarks:

This is one of nine sports being considered for inclusion in the 2000 Olympics.

Women's Varsity Sports

The following table includes the varsity sports for women that were offered by NCAA institutions during the 1995-96 academic year.

SPORT	DIVISION I	DIVISION II	DIVISION III	TOTAL
Archery	2			**2**
Badminton			3	**3**
Basketball*	297	281	385	**963**
Bowling		1		**1**
Cross Country*	299	223	302	**824**
Fencing*	24	2	18	**44**
Field Hockey*	72	24	130	**226**
Golf*	155	31	65	**251**
Gymnastics*	67	9	16	**92**
Ice Hockey	10	1	10	**21**
Lacrosse*	49	15	99	**163**
Rifle*	7	1	2	**10**
Rowing*	50	10	26	**86**
Skiing*	13	7	20	**40**
Soccer*	180	126	311	**617**
Softball*	205	221	314	**740**
Squash	6		19	**25**
Swimming & Diving*	165	60	195	**420**
Synchronized Swimming	4		2	**6**
Tennis*	293	220	339	**852**
Track & Field, Indoor*	246	98	173	**517**
Track & Field, Outdoor*	261	142	233	**636**
Volleyball*	286	263	362	**911**
Water Polo	11	1	6	**18**
TOTALS	**2,705**	**1,740**	**3,053**	**7,498**

**NCAA championships in these sports.*

1995 High School Girls Athletics Participation

The following information was compiled from an athletics participation survey conducted by the National Federation of State High School Associations (based upon competition at the high school level during the 1994-95 academic years).

1995 High School Girls Athletics Participation Survey

Sport	No. of States Reporting	No. of Schools	No. of Participants
Archery	2	7	63
Badminton	7	*353	7,592
Baseball 1	3	*82	**309
Basketball	51	16,029	426,947
Bowling	13	723	7,152
Canoeing	2	12	213
Competitive Spirit Squads	18	1,804	30,090
Cross Country	51	10,599	133,551
Decathlon	4	6	20
Equestrian	2	29	298
Fencing	4	34	523
Field Hockey	18	1,457	54,359
Football—11-man	18	*86	**295
8-man	1		**16
6-man	2	*2	**17
Golf	48	*5,426	**38,704
Gymnastics	35	1,561	20,277
Heptathlon	3	34	70
Ice Hockey	11	96	**647
Judo	1	5	23
Lacrosse	12	343	13,083
Pentathlon	1	1	8
Riflery	9	110	563
Rowing	7	28	858
Skiing—Cross Country	12	347	3,701
Skiing—Alpine	15	354	3,913
Soccer	49	6,057	**191,350
Softball—Fast Pitch	47	10,938	283,226
Softball—Slow Pitch	10	1,661	35,691
Swimming & Diving	45	4,817	**106,467
Team Tennis[1]	1	379	
Tennis	51	*10,270	**139,157
Track & Field— Indoor	21	1,763	**35,204
Track & Field— Outdoor	51	13,940	360,223
Volleyball	51	*12,537	340,176
Water Polo	6	269	2,129
Weight Lifting	8	112	2,396
Wrestling	21	*249	**804
Other	23	346	

* Includes some coeducational teams.

** Includes girls playing on boys' teams and boys playing on girls' teams.

[1] Number of schools offering coeducational team tennis.

PART VII

Resources

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Resources

National Governing Bodies

Archery
National Archery Association
One Olympic Plaza
Colorado Springs, CO 80909
719/578-4576
Fax: 719/632-4733
http://www.usarchery.org
e-mail: naa@usarchery.org

Badminton
U.S. Badminton Association
One Olympic Plaza
Colorado Springs, CO 80909
719/578-4808
Fax: 719/578-4507
http://mid1.external.hp.com/stanb/usba/usba.html
e-mail: usba1996@aol.com

Basketball
USA Basketball
5465 Mark Dabling Boulevard
Colorado Springs, CO 80918-3842
719/590-4800
http://www.usabasketball.com

Bowling
Young American Bowling Alliance
5301 South 76th Street
Greendale, WI 53129-1192
414/423-3421

Diving
U.S. Diving, Inc.
Pan American Plaza
Suite 430
201 South Capitol Avenue
Indianapolis, IN 46225
317/237-5252

Fencing
U.S. Fencing Association
One Olympic Plaza
Colorado Springs, CO 80909-5774
719/578-4511
Fax: 719/632-5737
http://www.usfa.org
e-mail: usfencing@aol.com

Field Hockey
U.S. Field Hockey Association
One Olympic Plaza
Colorado Springs, CO 80909-5773
719/578-4567
Fax: 719/632-0979
http://www.inovatec.com/usfha/default.htm
e-mail: gadb852prodigy.com

Figure Skating
U.S. Figure Skating Association
20 First Street
Colorado Springs, CO 80906
719/635-5200

Gymnastics (Artistic and Rhythmic)
USA Gymnastics
Pan American Plaza
Suite 300
201 South Capitol Avenue
Indianapolis, IN 46225
317/237-5050
Fax: 317/236-5069
http://www.usa-gymnastics.org/usag

Ice Hockey
USA Hockey
4965 North 30th Street
Colorado Springs, CO 80919
719/599-5500
http://204.131.249.1/usahock/usahock.htm
e-mail: usah@inovatec.com

Rowing
U.S. Rowing Association
Pan American Plaza
Suite 400
201 South Capitol Avenue
Indianapolis, IN 46225
317/237-5656 or
800/314-4ROW
Fax: 317/237-5646
http://wsnet.com/~jiml/usra/usra.html
e-mail: usrowing@delphi.com

Shooting
USA Shooting
One Olympic Plaza
Colorado Springs, CO 80909
719/578-4670
http://www.usc.edu/dept/usashooting

National Governing Bodies (cont.)

Skiing
U.S. Ski Association
1500 Kearns Boulevard
Park City, UT 84060
801/649-9090
Fax: 801/649-3613
http://www.ussa.org

Soccer
U.S. Soccer Federation
U.S. Soccer House
1801-11 South Prairie Avenue
Chicago, IL 60616
312/808-1300
Fax: 312/808-1301
http://members.aol.com/socfed/index.html
e-mail: socfed@aol.com

Softball
USA Softball
2801 N.E. 50th Street
Oklahoma City, OK 73111-7203
405/424-5266
http://www.usasoftball.org
e-mail: info@softball.org

Squash Racquets
U.S. Squash Racquets Association
23 Cynwyd Road
P.O. Box 1216
Bala Cynwyd, PA 19004
610/667-4006
Fax: 610/667-6539
http://www.opus1.com/squash/index.html

Swimming
U.S. Swimming Inc.
One Olympic Plaza
Colorado Springs, CO 80909
719/578-4578
http://www.usswim.org
e-mail: swiminfo@rmi.net

Synchronized Swimming
Synchro Swimming USA
Pan American Plaza
Suite 510
201 South Capitol Avenue
Indianapolis, IN 46225
317/237-5700

Team Handball
U.S. Team Handball Federation
One Olympic Plaza

Colorado Springs, CO 80909-5768
719/578-4582
Fax: 719/475-1240
http://www.sport.ussa.edu/hansplit.htm

Tennis
U.S. Tennis Association
70 West Red Oak Lane
White Plains, NY 10604
914/696-7000
http://www.usopen.org/uso95/usta.html

Track & Field
USA Track & Field
One RCA Dome, Suite 140
Indianapolis, IN 46225
317/261-0500
Fax: 317/261-0481
http://www.doitsports.com/usatf/index.html

Water Polo
U.S. Water Polo, Inc.
Pan American Plaza
Suite 520
201 South Capitol Avenue
Indianapolis, IN 46225
317/237-5599
http://www.h2opolo.com

Volleyball
USA Volleyball
3595 East Fountain Boulevard
Suite I-2
Colorado Springs, CO 80910-1740
719/637-8300
http://www.volleyball.org/usav

Coaches Associations

American Hockey Coaches Association
Joe Bertagna, Executive Director
7 Concord Street
Gloucester, MA 01930
508/283-2662

American Volleyball Coaches Association
Sandra Vivas, Executive Director
1227 Lake Plaza Drive
Suite B
Colorado Springs, CO 80906
719/576-7777 (ext. 101)
Fax: 719/576-7778
http://volleyball.org/avca

American Water Polo Coaches Association
Edward Reed Jr., President
P.O. Box 870387
University of Alabama
Tuscaloosa, Alabama 35487-0387
205/348-6156

American Women's Ice Hockey Coaches Association
Heather Linstad, President
Northeastern University
Arena Annex
Boston, MA 02115
617/437-2672

College Field Hockey Coaches Association
Beth Beglin, President
Carver-Hawkeye Arena
University of Iowa
Iowa City, IA 52242
319/335-9259

College Swimming Coaches Association of America, Inc.
G. Robert Boettner, Executive Director
1113 48th Avenue, North
Suite 118
Myrtle Beach, SC 29577
803/497-3800

Intercollegiate Women's Lacrosse Coaches Association
Dee McDonough, President
1790 10 East Market Street, #114
Harrisonburg, VA 22801
540/433-0204

National Association of Women's Collegiate Gymnastics Coaches
Meg Stephenson, President
BFAB
University of Minnesota
516 15th Avenue, Southeast
Minneapolis, MN 55455-0101
612/624-0514

National Golf Coaches Association
Julie Manning, President
Iowa State University
1800 South 4th Street
Ames, Iowa 50011
515/294-9959
Fax: 515/294-0125

National Soccer Coaches Association of America
James A. Sheldon, Executive Director
6700 Squibb Road
Suite 215
Mission, KS 66202
913/362-1747
Fax: 913/362-3439
http://www.nscaa.com

National Softball Coaches Association
Lacy Lee Baker, Executive Director
409 Vandiver Drive
Suite 5-202
Columbia, MO 65202
314/875-3033

NCAA Division I Track Coaches Association
James Carnes, Executive Director
1330 Northwest 6th Street
Suite D
Gainesville, FL 32601
904/955-2120

NCAA Division III Track Coaches Association
James D. Elrich, President
State University of New York
Fredonia, NY 14063
716/673-3333

United States Cross Country Coaches Association
Vin Lananna, President
Athletic Department
Stanford University
Stanford, California 94305
715/723-1051

United States Fencing Coaches Association
Edwin K. Hurst, President
3740 Alabama Street, #204
San Diego, California 92104
619/295-4847

Women's Basketball Coaches Association
Beth Bass, Executive Director
4646 B Lawrenceville Highway
Lilburn, GA 30247
404/279-8027

Women's Intercollegiate Cross Country Coaches Association
Gary L. Wilson, President
University of Minnesota
516 15th Avenue, Southeast
Minneapolis, MN 55455-0101
612/624-2058

Office for Civil Rights Regional Offices

Region I: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
Thomas J. Hibino
Regional Civil Rights Director
Office for Civil Rights, Region I
U.S. Department of Education
J.W. McCormack Post Office and Courthouse Building
Room 222
Boston, MA 02109-4557
617/223-9667
TDD 617/223-9695

Region II: New Jersey, New York, Puerto Rico, Virgin Islands
Paula D. Kuebler
Regional Civil Rights Director
Office for Civil Rights, Region II
U.S. Department of Education
26 Federal Plaza, 33rd Floor
Room 33-130
New York, NY 10278-0082
212/264-5180
TDD 212/264-9464

Region III: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia
Robert A. Smallwood
Regional Civil Rights Director
Office for Civil Rights, Region III
U.S. Department of Education
3535 Market Street
Room 6300
Philadelphia, PA 19104-3326
215/596-6772
TDD 215/596-6794

Region IV: Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee
Archie B. Meyer, Sr.
Acting Regional Civil Rights Director
Office for Civil Rights, Region IV
U.S. Department of Education
101 Marietta Tower
Suite 2000
Atlanta, GA 30301-2048
404/331-2954
TDD 404/331-7816

Region V: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin
Kenneth A. Mines
Regional Civil Rights Director
Office for Civil Rights, Region V
U.S. Department of Education
401 South State Street
Room 700C
Chicago, IL 60605-1202
312/886-3456
TDD 312/353-2541

Region VI: Arkansas, Louisiana, Oklahoma, Texas
George D. Cole
Acting Regional Civil Rights Director
Office for Civil Rights, Region VI
U.S. Department of Education
1200 Main Tower Building
Suite 2260
Dallas, TX 75202-9998
214/767-3959
TDD 214/767-3639

Region VII: Iowa, Kansas, Kentucky, Missouri, Nebraska
Steven D. Stratton
Acting Regional Civil Rights Director
Office for Civil Rights, Region VII
U.S. Department of Education
10220 North Executive Hills Boulevard

Office for Civil Rights Regional Offices (cont.)

8th Floor, 07-6010
Kansas City, MO 64153-1367
816/891-8026
TDD 816/374-6461

Region VIII: Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah, Wyoming
Cathy H. Lewis
Regional Civil Rights Director
Office for Civil Rights, Region VIII
U.S. Department of Education
Federal Building, Suite 310
1244 Speer Boulevard
Denver, CO 80204-3584
303/844-5695
TDD 303/844-3417

Region IX: California
John E. Palomino
Regional Civil Rights Director
Office for Civil Rights, Region IX
U.S. Department of Education
Old Federal Building, 09-8010
50 United Nations Plaza, Room 239

San Francisco, CA 94102-4102
415/556-7000

Region X: Alaska, American Samoa, Guam, Hawaii, Idaho, Nevada, Oregon, Washington
Gary D. Jackson
Regional Civil Rights Director
Office for Civil Rights, Region X
U.S. Department of Education
915 Second Avenue
Room 3310, 10-9010
Seattle, WA 98174-1099
206/220-7880
TDD 206/220-7907

Legal Organizations

National Women's Law Center
11 Dupont Circle, Suite 800
Washington, D.C. 20036
202/588-5180
http://essential.org/afc/nwlc.html

Northwest Women's Law Center
119 S. Main Street
Suite 330
Seattle, WA 98104
206/621-7691

NOW Legal Defense and Education Fund
99 Hudson Street
New York, NY 10013
212/925-6635
http://essential.org/afj/now.html

Trial Lawyers for Public Justice
Suite 800
1717 Massachusetts Avenue NW
Washington, DC 20036
202/797-8600

Journals/Publications

American Volleyball
Official Newsletter of the American Volleyball Coaches Association
1227 Lake Plaza Drive
Suite B
Colorado Springs, CO 80906

Breaking Down Barriers: A Legal Guide to Title IX
By Ellen J. Vargyas

Journals/Publications (cont.)

National Women's Law Center
1616 P Street, NW
Suite 100
Washington, D.C. 20036
202/559-5180

Playing Fair: A Guide to Title IX in High School & College Sports, Second Edition and Title IX: An Educational Resource Kit
Women's Sports Foundation
Eisenhower Park
East Meadow, NY 11554
800/227-3988

The NCAA News
6201 College Boulevard
Overland Park, KS 66211-2422
913/339-1906
http://www.ncaa.org/news

The Women's Sports Experience
A Newsletter from the Women's Sports Foundation
Eisenhower Park
East Meadow, NY 11554
800/227-3988

Women's Educational Equity Act Publishing Center
55 Chapel Street
Suite 276
Newton, MA 02158
800/225-3088
617/969-7100

Women in Higher Education (Newsletter)
1934 Monroe Street
Madison, WI 53711-2027
608/251-3232
http://www.itis.com/wihe/.www.html

Women's Sports and Fitness
2025 Pearl Street
Boulder, CO 80302

Other Organizations

Black Women in Sport Foundation
P.O. Box 2610
Philadelphia, PA 19130

California NOW (National Organization for Women)
926 J Street
Suite 523
Sacramento, CA 95814
916/442-3414

Council of Chief State School Officers (CCSSO)
1 Massachusetts Avenue, NW
Suite 700
Washington, DC 20001-1431
202/408-5505

National Association of College Marketing Administrators
c/o National Association of Collegiate Directors of Athletics
P.O. Box 16428
Cleveland, OH 44131
216/892-4000

National Association of Collegiate Women Athletic Administrators
Jennifer Alley, Executive Director
610 S. College Road
Wilmington, North Carolina 28403-3297
919/962-3232

National Association for Girls and Women in Sport
Diana Everett, Executive Director
1900 Association Drive
Reston, VA 22091
703/476-3453
http://www.aahperd.org/nagws.html

National Federation of State High School Associations
11724 Northwest Plaza Circle
P.O. Box 20626
Kansas City, MO 64153
816/464-5400

National Organization for Women
1000 16th Street
N.W. Suite 700
Washington, D.C. 20036
202/331-0066
http://www.now.org
e-mail: now@now.org

Publicists for Women's Sports Committee
College Sports Information Directors of America
Bill Smith, Chair

Assistant Athletics Director
University of Arkansas
Fayetteville, AR 72701
501/575-6533

Women's Sports Foundation
Donna Lopiano, Executive Director
Eisenhower Park
East Meadow, NY 11554
516/542-4700
800/227-3988
http://www.lifetime.tv.com/wosport

World Wide Web Sites on Gender Equity, Title IX and Women in Sports

American Association of University Women
http://www.aauw.org

Archives for Research on Women and Gender
http://www.utsa.edu/Library/Archives/index.html

Center for Research on Girls and Women in Sport
http://www.kls.coled.umn.edu/crgws/crgws.html

Director of Women's Professional Organizations
http://www.feminist.org/gateway/womenorg.html

Gender Equity In Sports by Dr. Christine Grant and Mary C. Curtis
http://www.3.arcade.uiowa.edu/proj/ge

National Association for Female Executives
http://www.nafe.com

National Association for Girls and Women in Sport
http://www.aahperd.org/nagws.html

National Collegiate Athletic Association (NCAA) Online
http://www.ncaa.org

Women in Sports by Jan Meyer
http://www.yolo.com/~asw/skywomen

Women and Girls in Sports
http://www.feminist.org/gateway/sp_exec.html

Women in Higher Education
http://www.itis.com/wihe/.www.html

Women's Sports Foundation
http://www.lifetimetv.com/WoSport

Women's Sports Index by WomenSports
http://www.womensports.com

WWW Women's Sports Page by Amy Lewis
http://fiat.gslis.utexas.edu/~lewisa/womsprt.html

Federal Regulations and Interpretations on Title IX

Department of Education, Title IX Regulations — 45 Fed. Reg. 30,955 (May 9, 1980).

Office for Civil Rights, "Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test," January, 1996.

Office for Civil Rights, "Title IX Policy Interpretation," December 11, 1979.

Title IX Legal Cases

Auburn University Settlement — Kiechel vs. Auburn University, Civil No. 93-V-474-E (M.D. AL July 19, 1993).

Brown University Decision — Cohen vs. Brown University, 991 F.2d 888 (1st Cir. 1993).

Brown University Decision — Cohen vs. Brown University, Civil No. 92-2483 (R.I. Mar. 29, 1995).

Brown University Settlement Agreement— Cohen v. Brown University, Civil No. 92-0197-P (R.I. Nov. 1994).

Brown University Appeal — Cohen v. Brown University, Civil No. 92-0197 P (R.I. Aug. 17, 1995).

Colorado State University Decision — Roberts v. Colorado State Bd. of Agriculture, 998 F.2d 824 (10th Cir. 1993).

Drake University Decision — Gonyo v. Drake University, Civil No. 4-93-70470 (IA Oct. 7, 1993).

Indiana University of Pennsylvania Decision — Favio v. Indiana University of Pennsylvania, 812 F. Supp. 578 (W.D. Pa. 1993).

Indiana University of Pennsylvania Settlement — Favia v. Indiana University of Pennsylvania, 7 F.3d 332 (3rd Cir. 1993).

Louisiana State University Decision — Pederson vs. Louisiana State University, Civil No. CV 94-247-A-MI (M.D. La. 1995).

University of Illinois Decision — Kelley vs. Board of Trustees, 35 F.3d 265 (7th Cir. 1994).

University of Southern California Decision — Stanley vs. University of Southern California, 13 F.3d 1313 (9th Cir. 1994).

University of Texas at Austin Settlement — Sanders vs. University of Texas at Austin, Civil No. A-92-CA-405 (W.D. Tex. Oct. 24, 1993).